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ABSTRACT

This report is intended to stimulate public interest and participation in revenue sharing programs, particularly among citizens concerned with the rights of minorities and women. To accomplish this aim, the report describes in considerable detail how revenue sharing works, examines its civil rights implications, and suggests ways in which local citizens can monitor or influence the use of revenue sharing funds. Separate sections discuss the various provisions of the general revenue sharing program and examine the special revenue sharing programs for manpower development, community development, education, and law enforcement. Included in the extensive appendixes are the text of the State and Local Assistance Act of 1972, the official federal regulations governing revenue sharing payments, a list of organizations currently involved in revenue sharing activities, and a selected bibliography of relevant publications. (Author/JG)

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MAKING CIVIL RIGHTS SENSE
OUT OF
REVENUE SHARING DOLLARS

United States Commission on Civil Rights
Clearinghouse Publication 50
February 1975

EA 006 756

U.S. COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights is a temporary, independent, bipartisan agency established by the Congress in 1957 to:

- Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and
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PREFACE

The primary goal of revenue sharing is to restore strength and vigor to State and local government. Federal financial resources are provided so that State and local officials can exercise greater leadership in solving their own problems. Revenue sharing will not accomplish its goal, however, as long as the people are not involved in deciding how these funds will be spent.

The purpose of this publication is to stimulate public interest and participation in revenue sharing programs, particularly among those concerned with the rights of minorities and women. In this report, the U.S. Commission on Civil Rights describes how revenue sharing works, examines its civil rights implications, and suggests ways in which local citizens can monitor or influence the use of revenue sharing funds.

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INTRODUCTION

Revenue sharing comes in different forms. General revenue sharing, signed into law October 20, 1972,[1] is intended to be new Federal funding that may be spent for almost any type of service or project. Special revenue sharing is viewed as a substitute for or consolidation of existing Federal grants in a particular program area. On December 28, 1973, manpower revenue sharing became the first of these to be enacted by Congress. More recently, grants for community development and some education programs were also consolidated.

Both general and special revenue sharing are part of an effort to reform the Federal grant system and move responsibility for major domestic decisionmaking activities from Washington, D.C., to the States and local governments.[2] Traditionally, most Federal aid to States and localities has been in the form of categorical grants, which are designed to meet some need that affects the entire Nation. Federal aid for the education of disadvantaged children (Title I of

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1. 31 U.S.C. §1221 *et seq*.

2. The Office of Revenue Sharing (ORS), the arm of the Department of the Treasury responsible for administering the general revenue sharing program, maintains that "/general/ revenue sharing was enacted as a form of aid to the hard-pressed units of State and local government." ORS comments on this publication in draft, forwarded with letter from John K. Parker, Deputy Director, Office of Revenue Sharing, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights (USCCR), on August 15, 1974 (hereafter referred to as *ORS Comments*). USCCR recognizes that this is consistent with the legislative history, which states that Congress intended general revenue sharing to ease the financial problems of State and local governments and to give them greater flexibility in the use of these funds. *U.S. Code Cong. & Ad. News* 3882-3884 (1972). ORS also maintains that the term "'special revenue sharing' has become obsolete and is no longer being used." *ORS Comments*. Admittedly, much of what is called special revenue sharing possesses few of the features originally attributed to this type of aid. USCCR notes, however, that the term is still used in reference to efforts at grant consolidation and simplification. See p. 70 for further discussion of this point.

the Elementary and Secondary Education Act)[3] is one example. It reflects the Federal Government's interest in enhancing the Nation's productivity by assisting States and localities to provide a good education to all citizens.

In recent years, the number of categorical grants has increased tremendously as Congress has perceived more areas of concern. There are now over 500 of these grant programs.[4] Each imposes substantial Federal controls to assure that State and local recipients undertake projects to meet the national purposes for which it was designed. Each requires a prospective recipient to submit a separate application, and each has its own rules and regulations governing program administration. Many have a matching fund requirement compelling State and local governments to match Federal aid dollars at a given ratio.

Several criticisms have been lodged against categorical grants. The profusion of grants has often resulted in uncoordinated programs at the local level. Frequently, governments with the most expertise in grant application procedures have been the most successful in obtaining Federal aid, regardless of their relative needs. Matching fund requirements have tied up State and local revenues that might otherwise have been used in worthwhile programs that are of strictly local concern.

Revenue sharing is one approach to remedying some of the shortcomings of the Federal grant system. Only minimal administrative provisions are imposed, and States and localities are given considerable latitude in making spending decisions.

In the eyes of those concerned with the rights of women and of racial and ethnic minorities, however, the solutions presented by revenue sharing also complicate the task of combating discrimination and its effects. Many Federal categorical aid programs provide assistance to a specific target population. Even though they may not specifically be singled out as sole beneficiaries, a large number of minorities and women are often reached. Federal financial support for on-the-job training of disadvantaged youth, Head Start classes, and Medicaid services for the needy are but a few examples of such programs.

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[3] 20 U.S.C. §241(a)-241(m).

[4] Executive Office of the President, Office of Management and Budget, *Budget of the United States Government, Special Analyses, Fiscal Year 1973* (Washington, D.C.: Government Printing Office, 1972), p. 241. ORS asserts, without giving a source reference, that "/r/ecent tabulations suggest a figure of over 1,000 /c/ategorical grant programs/." ORS Comments.

In contrast, the purpose of revenue sharing is to strengthen States and localities, governments that, even more than the Federal Government, have denied minorities and women equal employment opportunities, passed discriminatory laws, and otherwise acted less than forcefully in upholding the civil rights of women and minorities. At the same time, since few restrictions are placed on the expenditure of revenue sharing funds, civil rights advocates fear the Federal Government will pursue its enforcement of nondiscrimination laws less vigorously to avoid impinging upon the freedom otherwise intended to be given to recipient governments.

Civil rights leaders also associate revenue sharing with what they perceive as a declining commitment to public participation in federally-funded programs. Several categorical grants-in-aid contain citizen participation requirements that have enabled minorities and the poor to affect policy and program delivery of needed services.[5] In many communities, this has opened up a significant avenue of self-determination for the politically powerless. Poverty programs previously administered by the Office of Economic Opportunity (OEO) and Model Cities community development projects have been particularly noted for their tough guidelines on local participation.

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5. For a discussion on citizen participation in Federal aid programs, see Citizen Participation: A Review and Commentary on Federal Policies and Practices and Citizen Participation: The Local Perspective, both by Melvin B. Mogulof, published by the Urban Institute, Washington, D.C., in January 1970 and March 1970, respectively.

In recent years, however, successive steps have been taken first to dilute citizen participation requirements[6] and then to reduce funding or phase out these programs altogether.[7] Revenue sharing, as an alternative, provides few mechanisms for holding public officials accountable. Thus, to many minorities and women, revenue sharing accomplishes its purpose to strengthen State and local governments - but at the expense of their involvement in that process.

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[6] For example, in May 1969 the Department of Housing and Urban Development (HUD) issued a memorandum banning situations in which only a local citizens' group could initiate consideration of Model Cities projects, In addition, mayors were asked to submit assurances to HUD that city planning responsibilities were not impeded in circumstances (1) where the Model Cities director reported to a citizen policy group rather than to city government, and (2) where the citizen participation structure had what amounted to a program veto. Mogulof, Citizen Participation: Federal Policies and Practices, p. 71. The role of minorities and the poor in planning and administration of OEO programs has also been weakened as responsibility for ongoing projects has been turned over to other agencies. As a case in point, in early 1973 the Department of Labor (DOL) began to transfer planning and operating authority for former OEO manpower programs from community action agencies to State and local governments. At least one-third of the board members of community action agencies must be representatives of the poor living in the areas served. These agencies must also involve the poor in the conduct and evaluation of programs. Similarly stringent citizen participation requirements have not been imposed on State and local officials. See memorandum used to support plaintiffs' motion for a preliminary injunction in the case of Youngstown Area Community Action Council v. Arnett, C. A. No. 73-1908 (D. D. C., Nov. 13, 1973).

[7] For a detailed account of funding cutbacks and program terminations proposed by the administration, see the Budget of the United States Government for fiscal years 1974 and 1975. ORS points out that unlike OEO and Model Cities programs, "major program decisions /are made/ at the Washington level /under many Federal categorical grants and/...the funds effectively /bypass/ the normal State and local budget process." ORS Comments. USCCR recognizes that some Federal programs provide little opportunity for local community involvement. The concern of many civil rights leaders, however, is that the programs with strong citizen participation requirements are being cut back.

PART I

GENERAL REVENUE SHARING

On October 20, 1972, a unique form of Federal aid was established when President Nixon signed the State and Local Fiscal Assistance Act.[8] This act authorizes the payment of $30.2 billion in relatively unrestricted general revenue sharing funds to about 39,000 State and local governments during a 5-year period ending in 1976. Comprising about 12 percent of all Federal aid to State and local jurisdictions, general revenue sharing is the largest Federal domestic aid program in the United States. The program is administered by the Office of Revenue Sharing, an arm of the Department of the Treasury.

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[8] 31 U.S.C. § 1221 et seq. This act is hereafter referred to as the Revenue Sharing Act.

The Allocation Formula

The Revenue Sharing Act names States, cities, counties, townships, Indian tribes, and Alaskan native villages as those units of government eligible to receive revenue sharing money. Periodically, the Office of Revenue Sharing (ORS) sends these governments revenue sharing checks, the amount of which is determined by the total funds authorized for disbursement during that payment period, the allocation formula, and the data used in computing the formula.

The Revenue Sharing Act provides that $30.2 billion will be paid out to States and localities between January 1972 and December 1976. This sum is divided among seven entitlement periods in such a way that eligible governments receive increasing amounts as the cost of goods and services rises. The duration of each entitlement period and the amounts authorized for distribution are:

Entitlement Period	Dates	Amount (in millions)
1	Jan.-June 1972	$2,650
2	July-Dec. 1972	2,650
3	Jan.-June 1973	2,987.5
4	July 1973-June 1974	6,050
5	July 1974-June 1975	6,200
6	July 1975-June 1976	6,350
7	July-Dec. 1976	3,325

ORS disburses these funds to State and local governments in quarterly installments.

Several steps are followed to determine the allocation of revenue sharing money among States and to units of government within each State. Funds available for disbursement in any one quarter are divided among States according to whichever of two formulas yields each the most money. The use of two formulas is the result of a compromise between the House of Representatives and the Senate. The original Senate version has three factors: population, tax effort,[9] and per capita income. These three factors, plus urban population[10] and State income tax[11] receipts, constitute the second formula, which is the original House version. Since each State is entitled to the greater of two amounts, the total is more than the actual amount available for disbursement. Each State's share is, therefore, scaled down proportionately.[12]

Of the total funds going to each State, the State government is apportioned one-third.[13] The remaining two-thirds are distributed to various units of local government. First, the money is divided among county areas[14] using three factors of population, tax effort, and per capita income. (See figure 1.) If an Indian tribe or Alaskan native village within the county has a "recognized governing body which performs substantial government functions," it receives a share based on its proportion of the total county population.[15] The remaining money is apportioned among three levels of government -- the county, all cities, and all townships[16]-- based on the percentage of total adjusted taxes raised in the county area by each level.[17] The cities and townships divide their shares among themselves according to the three factors of population, adjusted tax effort, and per capita income.

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[9] Tax effort is the percentage of personal income paid in State and local taxes. For purposes of apportioning money among the States, all taxes collected by all jurisdictions within the State, including the State government, are counted.

[10] "Urbanized population means the population of any area consisting of a central city or cities of 50,000 or more inhabitants (and of the surrounding closely settled territory for such city or cities) which is treated as an urbanized area by the Bureau of the Census for general statistical purposes." 31 U.S.C. § 1228(a)(2).

[11] For the purpose of computing a State's entitlement, the State income tax amount must fall between 1 and 6 percent of Federal income tax liabilities.

[12] For calendar year 1972, each share was reduced by 8.4 percent. Because of the scaling down process, most States receive something between the amounts they would have been entitled to had either the three-factor or five-factor formula been adopted. However, 11 States actually receive less than they would have under either formula (Colorado, Florida, Indiana, Minnesota, Missouri, Nevada, Pennsylvania, Rhode Island, Texas, Virginia, and Wisconsin). Joint Committee on Internal Revenue Taxation, General Explanation of the State and Local Fiscal Assistance Act and the Federal-State Tax Collection Act of 1972 (Washington, D.C.: Government Printing Office, 1973), pp. 10 and 26.

[13] If a State does not maintain its level of aid to local government, its revenue sharing allocation is reduced by the amount of the decrease in intergovernmental aid.

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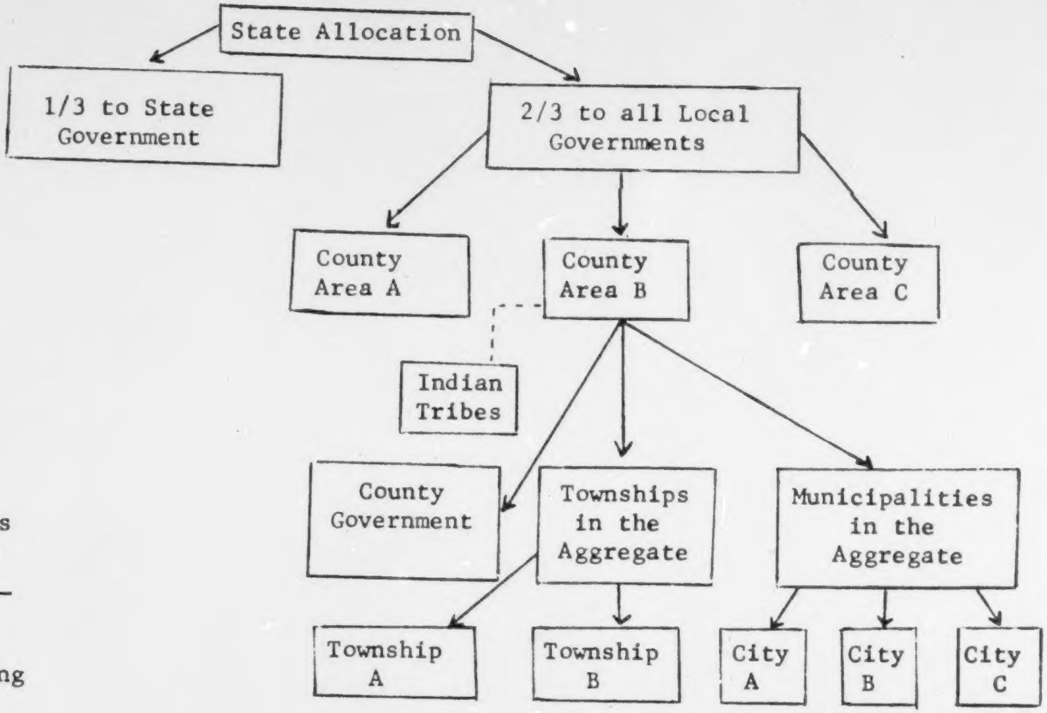
14. The term county area refers to the geographic area within the legal boundaries of the county and includes all local governments as well as the county government. It also refers to parishes in Louisiana and boroughs in Alaska.

15. Several inequities may occur in allocations to Indian tribes. In determining which tribes are eligible to receive revenue sharing money, the act is unclear whether it refers only to tribes having land over which they govern or also to tribal governments located some distance from a reservation. Moreover, the act and ORS regulations do not clarify what is meant by the vague term "substantial government functions." Questions have also been raised whether Congress intended only tribal members living on tribal land to be counted in population figures or whether all members living in county areas contiguous with a reservation are to be included. Finally, methods used to arrive at tribal population counts have not been applied uniformly and in some cases their validity may be challenged. See Reese C. Wilson and E. Francis Bowditch, Jr., General Revenue Sharing Data Study, vol. 4 (Menlo Park, Ca.: Stanford Research Institute and Cambridge, Mass.: Technology Management, 1974), appendix F.

16. Township governments are found in 21 States.

17. Adjusted taxes are those raised for purposes other than education.

Figure 1. Intrastate Distribution of Federal Revenue Sharing Funds



State automatically retains 1/3; 2/3 go to all local governments

County area distribution based on population, tax effort, and relative per capita income.

Indian tribe share determined by ratio of tribal population to total county population.

County government, all townships, and all municipalities receive shares equal to their proportional share of county area adjusted taxes.

Townships and municipalities distribute shares separately, both according to population, adjusted tax effort, and relative per capita income.

Thus, of the $63,010,333 going to units of government in Arizona during the current entitlement period, $20,991,955 will be granted to the State and the remainder will be divided among 14 county areas. Nearly $20.6 million alone will be distributed among Maricopa County area jurisdictions. Approximately $6.3 million of that amount will be allocated to the county government and another $367,580 will go to 4 Indian tribes located in the county. Of the remainder which will be distributed among 18 cities and towns, the largest amount ($9.7 million) will go to Phoenix.

Three exceptions to the standard allocation formula also affect the amount local governments receive. If the annual revenue sharing payment due to a city or township is less than $200, or if any such unit of government waives its entitlement, that money reverts to the county. A second provision prohibits any local government from receiving an allocation that is more than 50 percent of its adjusted taxes plus aid received from other governmental units. The Revenue Sharing Act also states that the per capita entitlement of any unit of local government must fall between 20 and 145 percent of the average per capita entitlement of all local governments.

In order to calculate the revenue sharing allocation for each unit of government, certain data are needed on population, personal income, taxes, and intergovernmental aid.[18] Population and income data are derived from the 1970 Census of Population and Housing conducted by the Bureau of the Census. Even where the population or income of the residents of a locality has changed, with few exceptions,

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[18] The Office of Revenue Sharing gives up-to-date detailed data definitions of factors used in the allocation formula in its publications Data Definitions for Allocations to Local Governments (Washington, D.C.: Government Printing Office, 1974) and Data Definitions for Allocations to State Governments for Entitlement Period 5 (Washington, D.C.: Government Printing Office, 1974).

ORS has continued to use 1970 data.[19] ORS reasons that the cost of more frequent censuses would be prohibitive and it is important to maintain uniformity of data for all units of government.

In contrast, ORS annually updates information on the finances of State and local governments. Financial data used for all but the fourth entitlement period (July 1973-June 1974) are collected through special surveys conducted by the Bureau of the Census. Data for fourth entitlement period allocations were derived from the 1972 Census of Governments.[20] Recipient governments are informed of the data elements being used to calculate their allocations and are given an opportunity to check them for accuracy and to contest data they consider erroneous.

Inequities in Revenue Sharing Allocations

Certain inequities arise in the distribution of revenue sharing money because of the allocation formula and because some of the data used in calculating each government's allocation are of questionable accuracy. For example, the formula enacted by Congress fails to recognize differences in State and local responsibility for governmental services. The decision to give States one-third of the revenue sharing funds was based on the fact that, on the whole, direct expenditures[21] of State governments are about one-third of all money spent by State and local governments combined. However, actual State expenditures as a percentage of total direct expenditures range from 25 percent in New York to 72 percent in Hawaii.[22]

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[19] Population data are revised to reflect boundary changes picked up in an annual Boundary and Annexation Survey conducted by the Census Bureau. However, even in these cases the 1970 population of the geographic area annexed is used in making the change.

[20] The Census Bureau is required by law to take a Census of Governments every 5 years.

[21] Direct expenditures do not include intergovernmental transfers, such as State aid to local government. Thus, revenue collected by the State but spent by a city would be considered a direct expenditure of the municipality.

The formula also does not take full account of the relative financial needs of units of local government. Revenue sharing may represent a windfall for many governments that provide few services for residents. For example, many Midwestern townships do little more than maintain local roads but receive revenue sharing money along with other governments that provide a much broader array of services. Several of these townships receive more than they would otherwise be entitled to because of the rule providing that no local government may receive less than 20 percent of the average per capita entitlement in its State.[23] Yet, other recipients, most notably larger urban jurisdictions with substantial minority populations, have become dependent on revenue sharing to provide basic services formerly financed by overburdened local tax revenues.

Furthermore, many cities are penalized by the provision that limits the per capita allotment of individual localities to no more than 145 percent of the average entitlement of all local governments within the State. Many cities do not receive their full entitlement because of this restriction, including Detroit; St. Louis; Louisville, Kentucky; Philadelphia; Baltimore; Boston; and Richmond, Va., all of which have large minority populations.[24]

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[22] ORS feels that any criticism of Congress' decision to give States one-third of the revenue sharing funds "bears some scrutiny." It observes that "States enjoy greater legal freedom to act/,/... generally may perform without restriction /of/ local government boundaries/, possess greater/...ability...to initiate new programs/, and can/ coordinate the efforts of localities." ORS Comments.

[23] Advisory Commission on Intergovernmental Relations, General Revenue Sharing: An ACIR Re-evaluation (Washington, D.C.: Government Printing Office, 1974), pp. 8-12.

Lack of direct comparison among units of government compounds these inequities. Because of the way in which funds are divided among recipients, allocations to particular municipalities in a county are affected directly by characteristics of other governments within the same county. As a consequence, a wealthy city in a poor county can receive more than a poor city in a wealthy county because there is a larger amount of money to distribute among jurisdictions in the poor county. For example, the city of Chester located in relatively wealthy Delaware County, Pa., has a lower per capita income and a higher tax effort than Harrisburg, Scranton, Erie, and Allentown, all of which are located in other counties. Nevertheless, all of these cities receive more per person in revenue sharing funds than Chester, which is almost 50 percent black (table 1).

Disparities among cities of different States may be even more unfair. As shown in table 1, seven large Texas cities have a higher tax effort and lower per capita income than either Albuquerque, New Mexico, or Little Rock, Arkansas, but receive several dollars less per person in revenue sharing funds than either of those two cities. Assuming that residents of these communities also benefit from revenue sharing allocated to their respective State and county

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[24] Ibid. Calculations of entitlements for the fourth entitlement period indicate that ultimately 529 county areas are affected by the 145 percent limitation. In most of the county areas, one or more municipalities are subject to this limitation.

ORS does not concur in this analysis of the impact of the allocation formula. It notes that the formula is based upon factors some of which are criteria of need, per capita income being the most obvious of these. It also points out that townships, where they are less "active," receive less in revenue sharing funds than other local governments. With respect to the 145 percent limitation, ORS submits that Congress' intent was to prevent "extreme disparities in per capita entitlements" from occurring rather than "to penalize cities." ORS Comments.

Table 1. A Comparison of Per Capita Revenue Sharing Funds for Selected Cities

City	Population	Per Capita Income	Taxes	Tax Effort*	Total Revenue Sharing Funds Received**	Per Capita Entitlement***
Chester, Pa.	56,331	$2,614	$4,522,519	3.07	$2,091,492	$37.13
Allentown, Pa.	109,871	3,258	9,082,000	2.54	4,122,054	37.52
Harrisburg, Pa.	68,061	2,891	5,927,392	3.01	2,850,627	41.88
Erie, Pa.	129,231	2,766	9,597,000	2.68	5,915,950	45.78
Scranton, Pa.	102,696	2,801	7,825,000	2.72	5,023,314	48.91
Austin, Tex.	251,808	2,998	19,989,000	2.65	8,114,711	32.23
San Antonio, Tex.	707,503	2,426	37,371,000	2.18	22,979,114	32.48
Lubbock, Tex.	149,101	2,817	9,999,668	2.38	5,138,472	34.46
Amarillo, Tex.	127,010	3,009	10,714,203	2.80	4,478,458	35.26
Beaumont. Tex.	117,548	2,984	9,882,119	2.82	4,153,682	35.34
Corpus Christi, Tex.	204,525	2,644	14,900,000	2.76	8,627,865	42.18
El Paso, Tex.	322,261	2,390	21,524,000	2.79	14,696,868	45.61
Little Rock, Ark.	132,483	3,166	7,171,000	1.71	7,484,266	56.49
Albuquerque, N.M.	243,751	3,091	15,868,796	2.11	16,740,925	68.68

$$\text{*Tax Effort} = \frac{\text{Total Taxes}}{\text{Population x Per Capita Income}} \times 100$$

**This includes payments made during entitlement periods 1, 2, 3, and 4 with adjustments made during entitlement period 5.

***This is total revenue sharing funds for the first four entitlement periods divided by the population of the city.

Sources: Office of Revenue Sharing, Data Elements: Entitlement Period 4; 4th Entitlement Period Allocations with Adjustments for Entitlement Periods 1, 2, & 3; and 5th Entitlement Period Allocations with Prior Period Adjustments.

governments, the per capita allotments paid to these levels of government, nevertheless, do not equalize disparities in entitlements among the cities.[25]

Aside from the inequities inherent in the allocation formula itself, the validity of the data used to calculate entitlements also poses difficulties. Data used for the population factor are the most notable example. The Bureau of the Census estimates that 5.3 million people, or 2.5 percent of the population, were not counted in the 1970 census. Nearly 8 percent of the black population was missed. There are indications of significant undercounts among Spanish speaking people as well.[26] Further, since minority group people are disproportionately found among the poor, population undercounts also affect the per capita income and tax effort factors. Thus, jurisdictions with large minority populations lose a considerable amount of revenue sharing money.[27]

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[25] ORS maintains that per capita entitlements of the 7 Texas cities shown in table 1 are lower than those in Albuquerque and Little Rock because "Texas is one of the few states which has yet to enact an income tax...." ORS argues that "/r/ather than bemoaning this situation, /one should/ welcome the penalizing of a regressive state tax system." ORS Comments. USCCR points out that local governments are also adversely affected when a State does not levy an income tax since revenue sharing funds are first allocated among State areas.

[26] The Bureau of the Census has estimated the extent of underenumeration for blacks and whites, males and females, and for people in different age groups. See Bureau of the Census, Department of Commerce, "Estimates of Coverage of the Population by Sex, Race, and Age in the 1970 Census" (prepared by Jacob S. Siegel), paper presented at the annual meeting of the Population Association of America, New Orleans, La., April 26, 1973. Similar estimates were not made for persons of Spanish speaking background although there is strong evidence that they were disproportionately underenumerated. See U.S. Commission on Civil Rights, Counting the Forgotten (Washington, D.C.: Government Printing Office, 1974).

When data are inadequate for providing equitable allocations, the Office of Revenue Sharing can use information from sources other than the 1970 census. Revised data can be in the form of estimates. Nevertheless, ORS has yet to alter population data to account for the underenumeration of blacks, Spanish-speaking persons, or other minorities.[28]

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[27] The Census Bureau acknowledges that large cities having heavy concentrations of blacks probably have higher undercount rates than areas with more balanced racial distribution, since the rate of underenumeration for blacks is generally higher than that for whites. The Census Bureau claims, however, that it is unable to prepare reliable estimates of undercoverage for individual jurisdictions. It argues that reliable data on migration within the United States needed to produce these estimates are not available. Bureau of the Census, "Estimates of Coverage," pp. 24-26. In its decennial census, the Bureau itself collects data on place of birth and place of previous residence. These questions, nevertheless, are asked of only a sample of the population. This detracts from their reliability in estimating population undercounts by jurisdiction.

[28] At the time ORS submitted its comments, it maintained that "population only affects a locality's entitlement when the recipient government is constrained /by 145 percent limitation/." It further noted that "two per-cent /sic/ of the white population was undercounted" and that "cities with minority populations might suffer from new allocations," even though the underenumeration rate is greater for minorities. *ORS Comments*. Subsequently, ORS received the results of a data study it contracted from Stanford Research Institute and Technology Management, Inc., indicating that the vast majority of governments would be affected by population adjustments regardless of whether they are subject to the 145 percent limitation. Study findings also suggest that cities with large minority populations and governments subject to the 145 percent limit would benefit the most from population adjustments. Reese C. Wilson and E. Francis Bowditch, Jr., *General Revenue Sharing Data Study*, 4 vols., prepared for the Office of Revenue Sharing (Menlo Park, Ca.: Stanford Research Institute and Cambridge, Mass.: Technology Management, August 1974). Similar findings were also made in a study conducted for the Joint Center for Political Studies. Robert P. Strauss and Peter B. Harkins, *The 1970 Undercount and Revenue Sharing: Effects on Allocations in New Jersey and Virginia* (Washington, D.C.: Joint Center for Political Studies, 1974).

Inequities in the allocation formula itself may be resolved in other ways. Foreseeing that the formula might do injustice to some local governments, Congress gave State legislatures limited power to change it. Once during the life of the act, each State may modify the formula for distributing money among county areas, cities, and other units of local government. Under this provision, States may use population and tax effort alone, population and relative per capita income alone, or any combination of these factors in modifying the formula.[29] The change must apply to all governments within the State and would remain in effect until December 1976. It would not alter a State's entitlement or change the total amount going to governments within the State. It would only affect the distribution of revenue sharing money among local governments.

No State has yet taken advantage of this provision, presumably because any improvement in fund distribution would not be worth the difficulty of reaching a compromise that would satisfy all jurisdictions. The effect any change might have on jurisdictions with a large number of minorities is unknown. Because of the differing characteristics of governmental units, such a change might reward one largely minority jurisdiction while penalizing another.

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29. The Revenue Sharing Act attempts to assign equal weight to these factors. Any change in the formula made by State governments could give substantially different weights to them. For example, relative per capita income could be counted twice.

Chapter 2

Spending Limitations and the Uses of Revenue Sharing

Several factors influence the manner in which State and local governments use general revenue sharing funds. The Revenue Sharing Act itself places some limitations on expenditures. These relatively few limitations, however, still allow a wide range of choice to States and localities. In making those choices, the role each level of government already plays in providing goods and services is an important determinant. The financial well-being of a community and the political persuasion that special interest groups exercise also figure significantly in spending decisions.

The Spending Limitations

Of the spending restrictions in the Revenue Sharing Act, some apply to all recipients. Others are imposed exclusively on either State or local governments.[30]

1. All recipients:
   a. Prevailing wages must be paid to employees when 25 percent or more of a project's cost is paid from revenue sharing.
   b. No revenue sharing money may be used directly or indirectly to meet matching fund requirements of other Federal aid programs.
   c. No person can be subjected to discrimination on the ground of race, color, national origin, or sex in any program or activity funded in whole or in part with revenue sharing.
   d. Revenue sharing money must be spent in accordance with the laws and procedures applicable to a government's own revenues.

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[30] All spending restrictions apply equally to interest earned from the investment of revenue sharing funds.

2. State governments:

   States must maintain their level of aid to local governments. Failure to do so will result in the reduction of a State's entitlement.

3. Indian tribes and Alaskan native villages:

   Revenue sharing can only be spent for the benefit of members of the tribe or village.[31]

4. Local governments (cities, counties, townships, Indian tribes, and Alaskan native villages):

   Money may be spent only in the following priority areas:

   (1) Maintenance and operating expenses[32] for:

      (a) Public safety (including law enforcement, fire protection, and building code enforcement).

      (b) Environmental protection (including sewage disposal, sanitation, and pollution abatement).

      (c) Public transportation (including transit systems and streets and roads).

      (d) Health.

      (e) Recreation.

      (f) Libraries.

      (g) Social services for the poor and aged.

      (h) Financial administration.

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[31] More specifically, the law states that funds may be spent only for the benefit of members of the tribe or village residing in the county area from which the funds were allocated. Often the area served by an Indian tribe covers more than one county, and the amount the tribal government receives for members in each county may differ depending in part upon the total allocation flowing into the county area. These circumstances, nevertheless, do not preclude the possibility of constructing or operating a facility in one county for the benefit of the entire tribe or village.

[32] These are costs necessary for maintenance of the enterprise, rendering of services, sale of merchandise or property, production and disposition of commodities produced, and collection of revenue.

(2) Capital expenditures[33] authorized by State or local law.

In addition, revenue sharing funds may be used to repay outstanding bonded indebtedness, provided that:

(a) They are used to pay the principal, but not the interest, on the debt.

(b) They are used to retire debts on "priority area" expenditures.

(c) Actual expenditures from the proceeds of the bond issue were made after January 1, 1972.

Capital outlays may include expenditures for education, housing, and community and economic development as well as for items allowable under operational and maintenance expenses. However, where State or local law expressly prohibits or does not provide enabling legislation for cities and counties to support capital expenditures in a particular program area, these expenditures would similarly be prohibited by the Revenue Sharing Act. Most cities, for example, cannot use revenue sharing for school construction because this is normally the financial responsibility of local school districts that operate independently of city government.[34]

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[33] These are expenditures resulting in the acquisition of or addition to fixed assets, such as land, buildings, machinery, furniture, and other equipment.

[34] ORS notes that States and cities can spend revenue sharing money for school construction by the "transfer /of/ funds to school districts." ORS Comments. USCCR notes that elsewhere ORS has ruled that general revenue sharing transfers to another jurisdiction can be made only if State or local laws permit a government to transfer its own revenues for the same purpose. Office of Revenue Sharing, One Year of Letter Rulings on General Revenue Sharing: A Digest (Washington, D.C.: Government Printing Office, March 1974), pp. IV 2-3. Only 1.7 percent of all school systems in the United States operate as agencies of and are fiscally dependent upon a city government. Bureau of the Census, Department of Commerce, 1972 Census of Governments, Finances of School Districts (Washington, D.C.: Government Printing Office, 1974), p. 1. Thus, few cities are legally able to transfer revenue sharing funds to local school districts. Moreover, about half the States would be unable to transfer revenue sharing funds to school districts for construction purposes since they are not permitted to use their own revenues in this fashion. Bureau of the Census, Department of Commerce, 1972 Census of Governments, State Payments to Local Governments (Washington, D.C.: Government Printing Office, 1974), table 7.

Loopholes in the Spending Limitations

Several characteristics of State and local finance and accounting make it difficult, if not impossible, to enforce the spending restrictions. For example, local governments can effectively avoid the "priority area" spending limitations imposed on them. In order to maintain their separate identity as Federal money, revenue sharing funds are required to be deposited in a locally established, special trust fund. However, once they leave the trust fund it becomes difficult to trace expenditures of revenue sharing funds to their true and final destination. Although local governments may use revenue sharing directly to pay for a "priority" expenditure, such as police protection, local money thus saved can be redirected or shifted to another priority area or even to nonpriority uses. As a consequence, increases expected to result from the allocation of revenue sharing money to a particular program may not resemble the actual increase in spending for that program.[35]

Perhaps the most well-known case of fund shifting occurred in early 1973 when Sam Massell, then mayor of Atlanta, attempted to spend revenue sharing money indirectly for a nonpriority use. He planned to allocate $4.5 million in revenue sharing for direct payment of firefighters' salaries. Mayor Massell repeatedly announced, however, that his real intent was to use local money thus made available to give water and sewer rebates to all citizens with a city water account.

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[35] ORS points out that its regulations require revenue sharing moeny to be audited to its final use. ORS Comments. As USCCR discusses on p.42 of this report, ORS' audit guide only requires auditors to trace direct uses of revenue sharing funds. Auditors do not determine the uses to which governments may redirect local revenues that are freed up by the expenditure of revenue sharing money.

A Federal district court in Mathews v. Massell[36] ruled that this planned use was illegal. The court made an important distinction, however. Expenditures are permissible from funds that are legitimately made available when revenue sharing money is used for municipal services that otherwise would have been paid for out of local general funds. Expenditures from funds transferred from one account to another simply to avoid the restrictions of the Revenue Sharing Act are not. Thus, the decision does not necessarily prevent State or local governments from using revenue sharing funds as a basis for redirecting freed-up local revenue to nonpriority expenditures if the recipient is not attempting expressly and overtly to override the law.

Shifting of revenue sharing funds affects enforcement of civil rights protections. Any program or activity directly funded by revenue sharing is, of course, subject to the nondiscrimination provisions of the Revenue Sharing Act.[37] Any program or activity to which legitimately freed-up local revenues are redirected, however, is not covered. If discrimination occurs in such a program or activity, remedial action must be taken under the authority of some other civil rights law.

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36. 356 F. Supp. 291 (N.D. Ga. 1973).

37. Use of revenue sharing in one aspect of a program gives ORS jurisdiction over all aspects of the same program. For example, if revenue sharing money is used to purchase police cars, nondiscrimination provisions of the Revenue Sharing Act then also extend to employment practices, police protection services, treatment in local jails, and other functions performed by the police department.

Circumvention of matching fund restrictions is also possible. Since many of the programs requiring State and local governments to match Federal funds are also those providing social and economic welfare assistance, the presence of loopholes is of special interest to minorities and women.[38]

The law states that revenue sharing may not be used directly or indirectly to meet the matching fund requirements of other Federal aid programs.[39] Direct use of revenue sharing money to match Federal dollars is fairly easy to detect, but indirect use is not. A State or local recipient can appropriate revenue sharing to a project that is not supported by Federal matching funds and, through a series of "paper" transfers, purposely or unintentionally redirect freed-up local revenues to meet matching fund requirements on another project.

Regulations on the indirect use of revenue sharing funds are fairly permissive. When a government's own revenues, exclusive of revenue sharing, increase enough each year to cover additional Federal matching funds, that government is presumed to be using its own revenues to meet matching fund requirements. No further checks are required to determine if, in fact, revenue sharing money is being utilized as matching funds.

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38. Federal programs with a matching fund requirement include family planning projects, the school lunch program, technical assistance grants for minority business development, Head Start preschool education for the poor, maternal and child health care projects, community mental health centers, Medicaid, social services and manpower training for welfare recipients, programs to help migrants leave the migrant stream, and grants for urban mass transit. See Executive Office of the President, Office of Management and Budget, Catalog of Federal Domestic Assistance: 1973 (Washington, D.C.: Government Printing Office, 1973).

39. Revenue sharing may be used directly as supplementary financing when local revenues allocated to a federally-assisted program are sufficient to meet any matching fund requirements.

Experience indicates that most units of government will have little difficulty in meeting standards set by the regulations on indirect use. In the last few years, State and local governments have had to allocate about 10 percent of their own revenues to match Federal grants.[40] At the same time, revenue from their own sources has grown at an average annual rate of about 9.5 percent.[41] Unless there is an unprecedented increase in State and local participation in Federal programs calling for matching funds, growth in revenue should be sufficient to meet additional matching fund requirements.[42]

Other Factors Affecting Revenue Sharing Expenditures

Certain political and financial realities exert considerable influence on the choices made by State and local officials. For example, where local governments are concentrating revenue sharing funds on capital outlays, the reasons most frequently cited are:

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[40] Executive Office of the President, Office of Management and Budget, Special Analyses, Budget of the U.S. Government, Fiscal Year 1974 (Washington, D.C.: Government Printing Office, 1973), p. 217.

[41] Ibid., p. 212.

[42] Inflation can undermine the ability of State and local governments to elude the matching fund restriction by detracting from their real purchasing power. In the past decade, the rise in cost of goods and services for State and local governments has averaged about 5 percent annually. Thus, the effective increase in their purchasing power has been about 4 percent. (This inflation rate is the average annual increase in the implicit price deflator for State and local governments reported in Historical Statistics on Governmental Finance and Employment, U.S. Department of Commerce, Bureau of the Census, 1967 Census of Governments, and the 1972 and 1973 July issues of Survey of Current Business, U.S. Department of Commerce, Bureau of Economic Analysis. The implicit price deflator indicates the amount of money required to buy the same goods and services which in 1958, the base year, could have been purchased for $100.) Where revenue sharing has enabled units of government to provide some tax relief, reductions in revenue resulting from tax cuts may also impinge on a State or local government's ability to evade the matching fund restriction. However, such reductions would be partially offset by natural increases in the tax base (i.e., rises in sales volume and property values).

1. Recent neglect of capital improvements due to statutory restrictions and lack of community acceptance of bond issues.
2. Maximum visibility for use of funds.
3. Avoidance of both tax increases and reductions in services if the general revenue sharing program is discontinued.
4. Uncertainty about the long term continuity of revenue sharing.

The functions each level of government performs also have a bearing on the types of programs it will support from revenue sharing. Among eligible recipients, for instance, cities play the most important role in providing police protection. Consequently, it is not unnatural that they devote a major part of their revenue sharing money to this function. In other cases, State law may empower a special district[43] separate from county or city government to provide a service, such as public housing development. Under this circumstance, counties or cities may be unable legally to use revenue sharing funds for public housing development.

The extent of any government's normal financial commitment to a function may also have some effect on the amount of revenue sharing money set aside for that purpose. Thus, if State governments spend a large part of their revenue sharing funds on education, this may be attributed to the fact that education is one of the largest items in State budgets. (Tables 2 and 3 summarize expenditure by function and by level of government.)

How Revenue Sharing Money is Being Spent

The best information currently available on revenue sharing expenditures comes from the Office of Revenue Sharing (ORS). ORS requires State and local governments to submit regular reports on the planned and actual use of revenue sharing money. Data from these

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[43] Special districts are independent governments that provide specific services; e.g., school districts and water and sewer districts.

Table 2. Expenditure by Function for States, Counties, Townships, and Cities, 1966-67

	STATES		COUNTIES		TOWNSHIPS		CITIES	
	Amount in millions	Percent of Total State Expenditures	Amount in millions	Percent of Total County Expenditures	Amount in millions	Percent of Total Township Expenditures	Amount in millions	Percent of Total City Expenditures
Education	$9,384	27.4	$1,893	16.0	$709	33.2	$3,140	16.5
Higher education	7,728	22.6	115	1.0	---	---	245	1.3
Local Schools	300	0.9	1,778	15.0	709	33.2	2,855	15.0
Other	1,357	4.0	---	---	---	---	40	0.2
Transportation	9,609	28.1	2,012	17.0	500	23.4	2,393	12.6
Highways	9,423	27.5	1,916	16.2	495	23.3	2,131	11.2
Air and Water Transportation	186	0.5	96	0.8	4	0.2	262	1.4
Public Welfare *	4,291	12.5	2,606	22.0	95	4.5	1,226	6.5
Cash Assistance	2,297	6.7	1,567	13.3	38	1.8	745	3.9
Other Public Welfare	1,994	5.8	1,038	8.8	57	2.7	482	2.5
Hospitals	2,857	8.3	1,180	10.0	10	0.5	1,028	5.4
Health	501	1.5	295	2.5	13	0.6	255	1.3
Police Protection and Corrections	1,188	3.5	726	6.1	117	5.5	2,158	11.4
Local Fire Protection	---	---	61	0.5	75	3.5	1,300	6.8
Sewerage and Sanitation	---	---	148	1.3	150	7.0	1,874	9.9
Local Parks and Recreation	---	---	200	1.7	61	2.9	905	4.8
Natural Resources	1,801	5.3	274	2.3	---	---	---	---
Housing and Urban Renewal	28	0.1	---	---	5	0.2	808	4.3
Libraries	49	0.1	98	0.8	30	1.4	302	1.6
Employment	545	1.6	---	---	---	---	2	**
Financial Administration	743	2.1	350	3.0	---	---	331	1.7
Other	3,263	9.5	1,976	16.7	53	2.5	3,273	17.2
	$34,250	100.0	$11,819	99.9***	$2,133	100.0	$18,995	100.0

* Welfare expenditures are comprised largely of direct payments (cash assistance) to the poor, aged, and disabled. According to the Office of Revenue Sharing, direct welfare payments cannot be financed with Federal shared revenues. Nevertheless, there are a variety of social service support programs for welfare recipients and other low income people that do qualify for revenue sharing.

** Less than 0.05%.

*** Percentages do not add to 100.0 due to rounding.

Source: U.S. Bureau of the Census, 1967 Census of Governments, Compendium of Government Finances.

Table 3. Percentage of Total Funds Each Level of Government Spends For Individual Functions, 1966-67

FUNCTION	REVENUE SHARING RECIPIENTS				OTHER GOVERNMENTS		
	STATE	COUNTY	TOWNSHIP	CITY	FEDERAL	SCHOOL DISTRICT AND SPECIAL DISTRICT	TOTAL **
EDUCATION	23.3	4.7	1.8	7.8	5.7	56.7	100.0
Higher education	86.5	1.3	-	2.7	-	9.4	99.9
Local schools	1.1	6.4	2.6	10.3	-	79.6	100.0
Other	36.8	-	-	1.1	62.2	-	100.1
TRANSPORTATION	55.3	11.6	2.9	13.8	14.5	2.0	100.1
Highways	67.2	13.7	3.5	14.3	0.7	0.7	100.1
Air and Water Transportation	5.8	3.0	0.1	8.2	75.6	7.3	100.0
PUBLIC WELFARE	44.7	27.2	1.0	12.8	14.3	-	100.0
Cash Assistance	49.0	33.5	0.8	15.9	0.8	-	100.0
Other Public Welfare	40.6	21.1	1.2	9.8	27.3	-	100.0
HOSPITALS	41.1	17.0	0.1	14.8	20.0	7.0	100.0
HEALTH	20.0	11.8	0.5	10.2	56.9	0.7	100.1
POLICE PROTECTION AND CORRECTIONS	26.2	16.0	2.6	47.6	7.5	-	99.9
LOCAL FIRE PROTECTION	-	4.1	5.0	86.7	-	4.2	100.0
SEWERAGE AND SANITATION	-	5.9	5.9	74.3	-	13.9	100.0
LOCAL PARKS AND RECREATION	-	15.5	4.7	70.1	-	9.7	100.0
NATURAL RESOURCES	17.8	2.7	-	-	76.9	2.6	100.0
HOUSING AND URBAN RENEWAL *	1.2	-	0.2	33.5	39.1	26.0	100.0
LIBRARIES	9.5	18.9	5.8	58.3	-	7.5	100.0
EMPLOYMENT	45.0	-	-	0.2	54.8	-	100.0
FINANCIAL ADMINISTRATION	30.7	14.7	2.2	13.9	38.5	-	100.0
OTHER	11.9	7.2	1.1	11.9	64.1	3.8	100.0

* Many housing programs are administered by public housing authorities that are classified as independent governments. However, in Arizona, Kentucky, Michigan, New Mexico, New York, and Virginia, municipal housing authorities are considered part of city government. In these States, municipalities may use revenue sharing for land acquisition and construction as well as for social services provided to tenants of low income housing.

** Percentages do not always add to 100.0 due to rounding.

Source: U.S. Bureau of the Census, 1967 Census of Governments, Compendium of Government Finances.

reports are analyzed and published by ORS.[44]

According to the most recent ORS survey, State and local governments have spent most of their revenue sharing funds in the areas of education, public safety, transportation, and environmental protection. (See table 4.) States, which of all revenue sharing recipients provide the most financial support for education, have devoted 65 percent of their expenditures to this purpose. Almost half of county revenue sharing money has gone to public safety and transportation. In keeping with their role, counties appear to be devoting the majority of transportation outlays to the construction and maintenance of highways and roads, while the larger part of public safety expenditures is going for police protection and county corrections systems.[45] Townships have spent their funds in similar fashion. Sixty-five percent has gone to public safety and capital outlays for transportation services.

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[44] This section draws heavily on an ORS publication entitled General Revenue Sharing - The First Actual Use Reports, released in March 1974. The publication covers data not only from the first actual use report but also from the first two planned use reports. See pp. 42 to 46 for a more detailed description of reporting requirements. Interest in revenue sharing has prompted various organizations to launch their own research on the use of revenue sharing funds and its impact on State and local governments. (See appendix C.) Findings from the more extensive research efforts have not yet been published.

[45] ORS does not require State and local governments to report the specific purposes of public safety and transportation expenditures. A study by the General Accounting Office of a sample of local governments (124 cities, 116 counties, and 10 townships) indicates that counties are concentrating public safety and transportation outlays in the area described. See General Accounting Office, Revenue Sharing: Its Use and Impact on Local Governments (Washington, D.C.: Department of the Treasury, 1974).

Table 4. Revenue Sharing Expenditures as of June 30, 1973 (amount in millions)

	States		Counties		Townships		Cities		Indian Tribes and Alaskan Native Villages	
	Amount Spent	Percent of Funds Spent	Amount Spent	Percent of Funds Spent	Amount Spent	Percent of Funds Spent	Amount Spent	Percent of Funds Spent	Amount Spent	Percent of Funds Spent
Public Safety	$20.0	2.0%	$149.6	22.9%	$51.5	32.0%	$434.0	44.4%	$0.2	11.8%
Environmental Protection	7.4	0.7	40.0	6.1	14.4	9.0	126.0	12.9	0.1	5.9
Public Transportation	55.6	5.4	161.5	24.7	50.9	31.7	148.7	15.2	0.2	11.8
Health	30.7	3.0	77.6	11.9	7.1	4.4	50.3	5.1	0.3	17.6
Recreation/Culture	3.7	0.4	29.4	4.5	6.8	4.2	76.6	7.8	0.2	11.8
Libraries[1]	0	0	6.3	1.0	1.7	1.1	10.4	1.1	0	0
Social Services for the Poor and Aged	61.2	6.0	17.5	2.7	1.3	0.8	11.7	1.2	0.1	5.9
Financial Administration	18.5	1.8	30.3	4.6	5.0	3.1	16.0	1.6	0.2	11.8
Education[2]	664.3	65.0	16.3	2.5	1.9	1.2	4.7	0.5	0	0
Multi-Purpose / General Government[2]	5.9	0.6	97.6	14.9	14.3	8.9	65.7	6.7	0.2	11.8
Social Development[1,2]	0	0	6.0	0.9	0.1	0.1	3.1	0.3	0	0
Housing/Community Development[2]	1.1	0.1	8.3	1.3	2.1	1.3	14.4	1.5	0.1	5.9
Economic Development[2]	2.2	0.2	1.8	0.3	0.1	0.1	7.3	0.7	0.1	5.9
Other	151.9	14.9	12.5	1.9	3.6	2.2	8.6	0.9	0	0
Total Spent	$1022.5	100.1%[4]	$654.7	100.2%[4]	$160.8	100.1%[4]	$977.5	99.9%[4]	$1.7	100.2%[4]
Total Disbursed[3]	2256.0		$1688.8		$325.4		$2357.8		$7.9	
Percent Spent	45.3%		38.8%		49.4%		41.5%		21.5%	

[1] This category is not identified spearately on State reports. Any expenditures for this purpose are included in the "Other" category.

[2] Local governments are allowed to spend money for capital outlays, but not for operating and maintenance costs, in this category.

[3] Revenue sharing recipients are allowed up to 24 months from the end of an entitlement period to spend funds which apply to that period. (31 C.F.R. 51.40(b))

[4] Totals do not add to 100 percent due to rounding.

Source: Office of Revenue Sharing, General Revenue Sharing - The First Actual Use Reports, March 1974.

Cities, which carry the major responsibility for local police and fire protection, have devoted nearly 45 percent of their revenue sharing money to public safety.[46] Significant amounts have also been spent for transportation and environmental protection. Capital outlays constitute nearly two-thirds of transportation expenditures. Most of the environmental protection expenditures have been for sewage and sanitation services,[47] which are usually furnished by city government.

Generally, State and local governments appear to be using revenue sharing money in relatively few functional areas. For the most part, these are functions for which each level of government has the greatest responsibility. Further, the data suggest at first blush that local governments are spending comparatively less revenue sharing money on social welfare functions (i.e., education, welfare, health, housing, and community development). (Compare generally the figures shown in tables 2 and 4.)[48] State governments, on the other hand, are utilizing an unusually high percentage of revenue sharing money for social welfare, mainly education.

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[46] The GAO study showed that, of public safety expenditures in the cities surveyed, 62 percent went to police protection, 32 percent to fire protection, and 6 percent to the correctional system. Ibid., pp. 52-55.

[47] Ibid.

[48] Table 2 contains costs for some items that are not permitted with revenue sharing. These include welfare cash assistance payments; operating and maintenance expenses for education, housing, and community development; and local matching funds for federally-assisted programs.

Similarly, capital outlays seem to be enjoying an extraordinarily high degree of popularity. As table 5 shows, local governments are using a much greater proportion of revenue sharing funds for capital outlays than is their habit with general revenues. This tendency is most pronounced among smaller cities and counties.

The availability of revenue sharing funds has enabled a large percentage of governments to provide some form of tax relief.[49] About 45 percent of all State and local governments have indicated that revenue sharing has either helped reduce the rate of a major tax, prevented increases in the rate of a tax, prevented enactment of a new tax, or reduced the amount of a rate increase in a major tax. This relief has mostly affected property taxes.[50] Counties have benefited the most from revenue sharing in lightening tax burdens. (See table 6.)

Revenue sharing has also helped minimize increases in the outstanding debt of State and local governments. Table 6 shows that about one-third of all units of government have avoided or lessened debt increases through revenue sharing. Again, counties have been the primary beneficiaries.[51]

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[49] Theoretically the allocation formula discourages tax cuts by rewarding tax effort. (See pp.7 and 8 above.) However, since tax effort is only one variable in the distribution formula, support in favor of maintaining tax levels is diminished. Further, to the extent that other governments similarly provide some tax relief, loss of revenue to any one government will be minimal because its tax effort is always measured in relation to that of other recipients.

[50] Office of Revenue Sharing, Preliminary Survey of General Revenue Sharing Recipient Governments, prepared by Technology Management, Inc. (n. p., 1973), p. 18.

[51] Preliminary findings from a Brookings Institution study of 65 State and local governments are similar to those of ORS. Among the local governments sampled by Brookings, about two-fifths of revenue sharing money has been used to substitute for funds that would have been raised either through borrowing or tax increases or by program cutbacks. State governments used nearly two-thirds of revenue sharing money for this purpose. The remainder went for new capital outlay projects, expanded operations, increased pay and benefits, and other forms of new spending. See Richard P. Nathan, Statement on Revenue Sharing before the Senate Subcommittee on Intergovernmental Relations, June 5, 1974.

Table 5. Comparative Use of General Revenues and General Revenue Sharing for Capital Outlays

Type of Government (Population Size)	Percent of Revenue Sharing Devoted to Capital Outlays (1/1/72 - 6/30/73)	Percent of Total Expenditures Devoted to Capital Outlays (FY 67)
States	6%	20%
Townships	48	18
Counties	56	16
100,000+	48	16
50,000-99,999	63	15
25,000-49,999	65	15
10,000-24,999	67	15
under 10,000	64	13
Cities	44	20
100,000+	27	18
50,000-99,999	44	22
25,000-49,999	56	25
10,000-24,999	65	24
under 10,000	68	25
Total	33%	23%

Sources: Office of Revenue Sharing, General Revenue Sharing - The First Actual Use Reports and Bureau of the Census, 1967 Census of Governments, Compendium of Government Finances, Finances of County Governments, and Finances of Municipalities and Township Governments.

Table 6. Percentage of Revenue Sharing Recipients Providing Tax Relief or Minimizing Debt Increases

Unit of Government	Tax Relief	Minimizing Debt Increases
States	30.2%	15.7%
Counties	57.7	39.1
Townships	43.5	35.5
Cities	43.6	27.9
Indian Tribes and Alaskan Native Villages	0.7	19.4
Total	44.7%	32.6%

Source: Office of Revenue Sharing, General Revenue Sharing - The First Actual Use Reports.

Evaluating the Impact of Revenue Sharing Expenditures on Minorities and Women

Because local governments appear to be spending relatively less revenue sharing money directly on social welfare programs, some observers believe that minorities and women may not be receiving their fair share of the goods and services made possible with revenue sharing. Since ORS collects no data on the beneficiaries of programs, however, this suspicion cannot be confirmed.

In many ways, certain social welfare programs may not benefit minorities and women. For example, public hospitals and clinics may be built only in nonminority neighborhoods or follow conservative policies on provision of family planning services. Revenue sharing funds may go to colleges and universities that lack a minority recruitment program or provide substantially less financial support for women's than men's athletic programs.

At the same time, expenditures in other areas, such as public safety, sanitation, and transportation can work to the advantage of women and minorities. For example, a local government may use revenue sharing funds to support a campaign to recruit minorities and women for the police and fire departments. Sanitation expenditures may help build more modern sewage disposal facilities so that a city can discontinue operation of an open incinerator located in a predominantly minority section of town. Transportation costs may be budgeted to provide lower bus fares for older residents, a disproportionate number of whom are minorities and women living in poverty.[52] Since expenditures are not reported in this detail, however, it is difficult to assess the direct impact of revenue sharing expenditures on minorities and women.

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[52] According to the 1970 census, the incidence of poverty among people aged 65 and over is: all males, 22.5 percent; white males, 20.3; black males, 46.0; Spanish males, 31.1; all females, 30.9 percent; white females, 29.0; black females, 52.2; Spanish females, 36.0. U.S. Department of Commerce, Bureau of the Census, Low-Income Population, Vol. PC(2)-9A, (Washington, D.C.: Government Printing Office, 1970), Table 8.

ORS data are even less enlightening about some of the potential indirect effects of revenue sharing. For instance, revenue sharing funds spent directly for public safety, sanitation, and transportation may be accompanied by a shift of local revenues to more socially-oriented programs. Moreover, revenue sharing expenditures of one government can have "spillover" effects on another unit of government that may be beneficial to minority group people. State use of revenue sharing funds primarily for education is one example of an expenditure that could have favorable consequences, particularly for minorities in inner cities.

Central cities generally have higher per capita expenditures than their surrounding suburbs, owing primarily to the demands for noneducational services needed by a constituency that is increasingly minority, poor, and elderly.[53] Consequently, central cities spend less per capita for education than suburban jurisdictions even though it costs large city school districts more to provide educational services and resources at least equal to those of other communities.[54] In recent years many States have tried to find and institute more equitable methods of financing education, some of which take into account the special cost requirements of urban schools.[55] Where revenue sharing is being utilized in new State aid programs to local schools,[56] city residents not only may enjoy higher educational expenditures but may also be able to devote more of their local tax dollars to meet other pressing needs.[57]

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[53] For a description of demographic characteristics and expenditures in central cities and suburbs, see Seymour Sacks and John Callahan, "Central City Suburban Fiscal Disparity," in City Financial Emergencies: The Intergovernmental Dimension, by the Advisory Commission on Intergovernmental Relations (Washington, D.C.: Government Printing Office, 1973), appendix B.

[54] See, for example, Norman Drachler, "The Large-City School System: It Costs More To Do The Same," in Equity for Cities in School Finance Reform (Washington, D.C.: The Potomac Institute, 1973).

[55] For a description of school finance reform activities see Virginia Fleming, The Cost of Neglect, The Value of Equity: A Guidebook for School Finance Reform in the South (Atlanta: Southern Regional Council, 1974) and A Legislator's Guide to School Finance (Denver: Education Commission of the States, 1973).

Tax relief made possible by revenue sharing also has a bearing on minority and women's concerns. Poor people and the elderly pay a larger share of their current money income for property and sales taxes than wealthier families.[58] Since minorities and female-headed households are disporportionately counted among the poor,[59] tax relief resulting from the availability of revenue sharing funds should work to their advantage.[60] Most of this relief, however, has taken the form merely of avoiding or minimizing further property tax increases[61] and, consequently, has probably done little to equalize the heavier burden borne by people with fixed or low incomes.

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[56] ORS reports do not distinguish between revenue sharing money channeled to higher education and that going to local elementary and secondary schools. An early study done by the General Accounting Office indicates that the vast majority of State revenue sharing money authorized or planned for expenditure on education programs is going to elementary and secondary school districts. See General Accounting Office, Revenue Sharing: Its Use By and Impact on State Governments (Washington, D.C.: Department of the Treasury, 1973), pp. 15-16. In contrast, in a hearing before the Advisory Commission on Intergovernmental Relations, Michael Resnik of the National School Boards Association stated that a large part of revenue sharing money was going for higher education, manpower training, adult education, or for reducing property taxes. He suggested that 10 to 15 percent, rather than 65 percent, of State revenue sharing funds was being used as additional support for elementary and secondary education. See ACIR Information Bulletin No. 74-6, June 1974.

[57] New State finance schemes may also benefit suburban jurisdictions. Substantial increases in State support of education may relieve pressures on local property taxes. Since suburban governments devote proportionately more of their tax dollars to education than inner cities, the suburbs would experience relatively more financial relief from the additional State aid.

[58] Charles S. Benson, The Economics of Public Education (Boston: Houghton Mifflin Co., 1961), p. 119, and Advisory Commission on Intergovernmental Relations, Financing Schools and Property Tax Relief--A State Responsibility (Washington, D.C.: Government Printing Office, 1973), pp. 31-42.

[59] Bureau of the Census, Low-Income Population, 1970 Census of Population, tables 3 and 4. About 10 percent of whites and one-third of the minority population are in poor families. Of people living in male-headed households, about 10 percent are below poverty level, compared to nearly 40 percent of those in female-headed households.

Some States have launched efforts to provide relief to the elderly and the poor. These efforts, however, were already well under way before the advent of revenue sharing and, thus, cannot be directly related to the availability of new Federal dollars. Moreover, most property tax relief has been directed toward the elderly and not to the poor generally, where it would be of more universal benefit to the minority population.[62]

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[60] General rate reductions or postponement of increases give relief to taxpayers in proportion to their burden. If some people pay twice as much of their income to taxes as others, the relief as a proportion of income will also be twice as great. This, however, will not equalize the impact of taxes on individuals unless special measures are taken to provide even further relief for those with lower incomes.

Example:	Family A	Family B
Family income	$4,500	$17,500
Amount of property taxes	297	577.50
Taxes as percent of income	6.6%	3.3%
Ratio of A's to B's burden	2	1
Amount of tax relief (10 percent general tax cut)	$29.70	$57.75
Tax relief as percent of income	0.66%	0.33%
Ratio of A's to B's relief	2	1
New tax amount	$267.30	$519.75
Taxes as percent of income	5.94%	2.97%
Ratio of A's tp B's new burden	2	1

[61] ORS, Preliminary Survey, appendix C.

[62] Only Michigan, Oregon, Vermont, and Wisconsin have programs to alleviate the property tax burden of all low-income people, including renters as well as homeowners. See Advisory Commission on Intergovernmental Relations, Information Bulletin No. 74-1, Washington, D.C., January 1974.

In short, minorities and women can be affected by revenue sharing expenditures in ways that go beyond local governments' neglect of social welfare programs. Expenditures in other program areas, such as public safety, environmental protection, and transportation, can bear on the civil rights of women and minorities. Revenue sharing can also influence how State and local governments spend revenues from other sources and the ways in which different levels of government share financial responsibility for public services. These related developments may be important to the welfare of minorities and women as well.

Finally, revenue sharing must be scrutinized for its impact both on expenditures and taxation. The net effect of government activity is the difference between what people pay to support their government and what they receive in return. All these issues must be addressed in evaluating the impact of revenue sharing on women and racial and ethnic minority groups.

Chapter 3

Public Accountability

One often stated purpose of revenue sharing is to increase the voice of people in the affairs of their State and local governments. As former President Nixon said in his 1974 state of the Union message, revenue sharing is intended "to let people themselves make their own decisions for their own communities." Accordingly, the Revenue Sharing Act and ORS regulations contain certain provisions intended to make local officials publicly accountable for the expenditure of revenue sharing funds.

One means of accountability is the requirement that all revenue sharing expenditures be subject to audit. Because of its small staff, ORS is relying heavily on State and local government auditors and independent public accountants to audit most of the 39,000 recipients.[63] Past experience suggests, however, that many State and local auditors lack the professional competence to perform an acceptable audit in accordance with Federal standards prescribed by the General Accounting Office.[64] These standards define the full scope of an audit as encompassing:

1. An examination of financial transactions, accounts, and reports, including an evaluation of compliance with applicable laws and regulations.

2. A review of efficiency and economy in the use of resources.

3. A review to determine whether desired results are effectively achieved.[65]

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[63] 31 C.F.R. §51.41 (Supp. 1973).

[64] Hearings on the Subject of General Revenue Sharing Before the House Committee on Ways and Means, 92nd Cong., 1st Sess., 1971, p. 1237 (testimony of Comptroller General Elmer Staats).

[65] General Accounting Office, Standards for Audit of Governmental Organizations, Programs, Activities and Functions, 1972, p. 2.

Most State and local auditors are trained and experienced in doing audits that incorporate only the first of these three elements.

The Office of Revenue Sharing has developed a guide to assist State and local government auditors and independent public accountants in auditing revenue sharing recipients.[66] These guidelines only require verification of financial transactions and compliance with applicable laws. A full audit involving a review of the economy and efficiency with which funds are used and the achievement of program objectives is recommended but is not compulsory.[67]

The absence of these elements in revenue sharing audits has a particular bearing on the financial well-being of larger cities, where minorities tend to be concentrated. Cities generally are confronted with a greater demand for services for which traditional revenue sources are becoming increasingly less adequate and, thus, are concerned with making the best use of their money. Revenue sharing audit standards do not require auditors to be competent in giving recipient governments special guidance in this respect.

As part of their examination, auditors must determine if there are any indications of "possible failure to comply substantially" with the civil rights provisions of the law.[68] ORS is the first Federal agency to include civil rights matters as part of a regular audit requirement. The purpose of the auditors' review, however, is to detect possible areas of discrimination, not to conduct a full civil rights investigation. Auditors are more guardians against

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66. Department of the Treasury, Office of Revenue Sharing, Audit Guide and Standards for Revenue Sharing Recipients (Washington, D.C.: Government Printing Office, 1973).

67. Ibid., p. I-2. ORS notes that "the revenue sharing Act does not prescribe use of the GAO standards." ORS Comments.

68. 31 C.F.R. §51.41(c)(4) (Supp. 1973).

fraud and poor accounting practices than against civil rights violations. ORS guidelines state that, in connection with civil rights, auditors must ascertain whether:

1. The recipient has kept records required by the Equal Employment Opportunity Commission (EEOC) on the race, ethnic background, and sex of employees.[69]
2. There are any complaints outstanding or investigations in progress where revenue sharing money is involved.
3. Any civil rights suits have been adjudicated or are pending against recipients involving revenue sharing funds.
4. Any facilities financed by revenue sharing funds have been located in such a manner as to obviously have the effect of discriminating.
5. The recipient has a formal policy concerning nondiscrimination in employment.[70]

There are other civil rights matters auditors are capable of reviewing but are not required to by ORS. These include determining whether:

1. Contracts written by a unit of government with contractors or grantees contain a nondiscrimination clause.
2. Entrance tests and other requirements for employment by the recipient government have been validated for nondiscrimination.
3. The government has an office responsible for enforcement of civil rights with respect to its own activities and those of contractors and grantees.

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69. Under authority of the Equal Employment Opportunity Act of 1972 (42 U.S.C. §2000e), the EEOC requires State and local governments with 15 or more employees to keep records on the race, ethnic background, and sex of their employees. Governments with 100 or more employees submit these data to EEOC on a regular basis. From time to time, EEOC also asks smaller governments to report this information from their records. (29 C.F.R. §1602.32) Since governments with 15-100 employees do not regularly file race/ethnic/sex data with EEOC, the Office of Revenue Sharing maintains that its "audit effort should substantially increase compliance with EEOC requirements." ORS Comments.

70. ORS, Audit Guide, pp. V-3 and V-4.

Even though one of the functions of auditors is to examine the legality of financial transactions, ORS does not take full advantage of the opportunity to use them in its civil rights enforcement effort.

ORS audit guidelines also stop short of examining how local revenues freed by the use of revenue sharing funds are redirected, except when revenue sharing money is intermingled with other funds so that expenditures cannot be separately accounted for.[71] When revenue sharing money is intentionally used to supplant State or local funds, in most instances adept bookkeeping practices may conceal this fact from the auditors.[72]

A second requirement intended to promote public accountability is the reporting process. Two reports must be submitted periodically to the Office of Revenue Sharing: a planned use report filed before the beginning of each entitlement period and an actual use report filed before September 1 of each year. The latter gives the status of funds as of June 30.[73]

These reports have three faults. Planned and actual expenditures are reported according to broad functional categories (e.g., public safety, health) rather than by specific program or activity (e.g., purchase of fire trucks, salaries for new police recruits). (See figure 2). This vagueness detracts from their usefulness as a planning and evaluation tool and as a means for keeping local citizens well informed. The reports also fail to ask for data on the race, ethnicity, and sex of beneficiaries.[74] Consequently, the direct impact of revenue sharing on minorities and women cannot be assessed in relation to their needs and their representation in the population of a locality.[75] Finally, because revenue sharing dollars can be substituted for State and local revenues, the reports are of little value in analyzing the ultimate impact of the program.

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[71] Where revenue sharing is shown merely as constituting a percentage of total expenditures for a particular category, all expenditures must be examined. Ibid., pp. V-2 and V-3.

[72] ORS asserts that "/t/he law places no limit on...displacement, so that auditors are not required to perform tracking of /redirected State and local funds/." ORS Comments. USCCR points out, however, that in Mathews v. Massell a Federal district court ruled that intentional use of revenue sharing to supplant State and local funds subsequently redirected to uses prohibited by the Revenue Sharing Act is unlawful. See pp.21-22.

[73] 31 C.F.R. §51.11 (Supp. 1973).

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[74] Since ORS has "access to all E.E.O.C. figures relating to municipal employment," it feels that "requiring the inclusion of such figures on the /reports/ would subject recipient governments to needless time and expense." ORS Comments. USCCR does not espouse duplication of data collection efforts by Federal agencies. ORS' response, however, does not address the issue of equity in the provision of public services, an analysis of which would require collection of race/ethnic/sex data on program beneficiaries. Further, while EEOC data are easily obtained by ORS, they are not readily accessible to most individuals or organizations. With few exceptions, EEOC declines to give out figures on individual jurisdictions. As an alternative, ORS regulations require revenue sharing recipients to permit public inspection of supporting documentation for planned and actual use reports. ORS, however, has not specifically defined the nature of the supporting documentation that should be made available.

[75] ORS contends that "/b/ecause of its speculative and unbinding nature, it would be meaningless to require governments to pinpoint expenses on their Planned Use Reports. For the same reason, the gathering of ethnic data would be equally meaningless for the Planned Use Report." ORS Comments. USCCR feels that if revenue sharing recipients were compelled to report proposed expenditures in greater detail than the broad functional categories now contained in the planned use reports, local citizens would have a more concrete proposal to which they might react. Thus, greater community involvement could result. It would also aid ORS in spotting potential acts of discrimination and give it an opportunity to forewarn a locality before funds are actually spent in violation of civil rights requirements.

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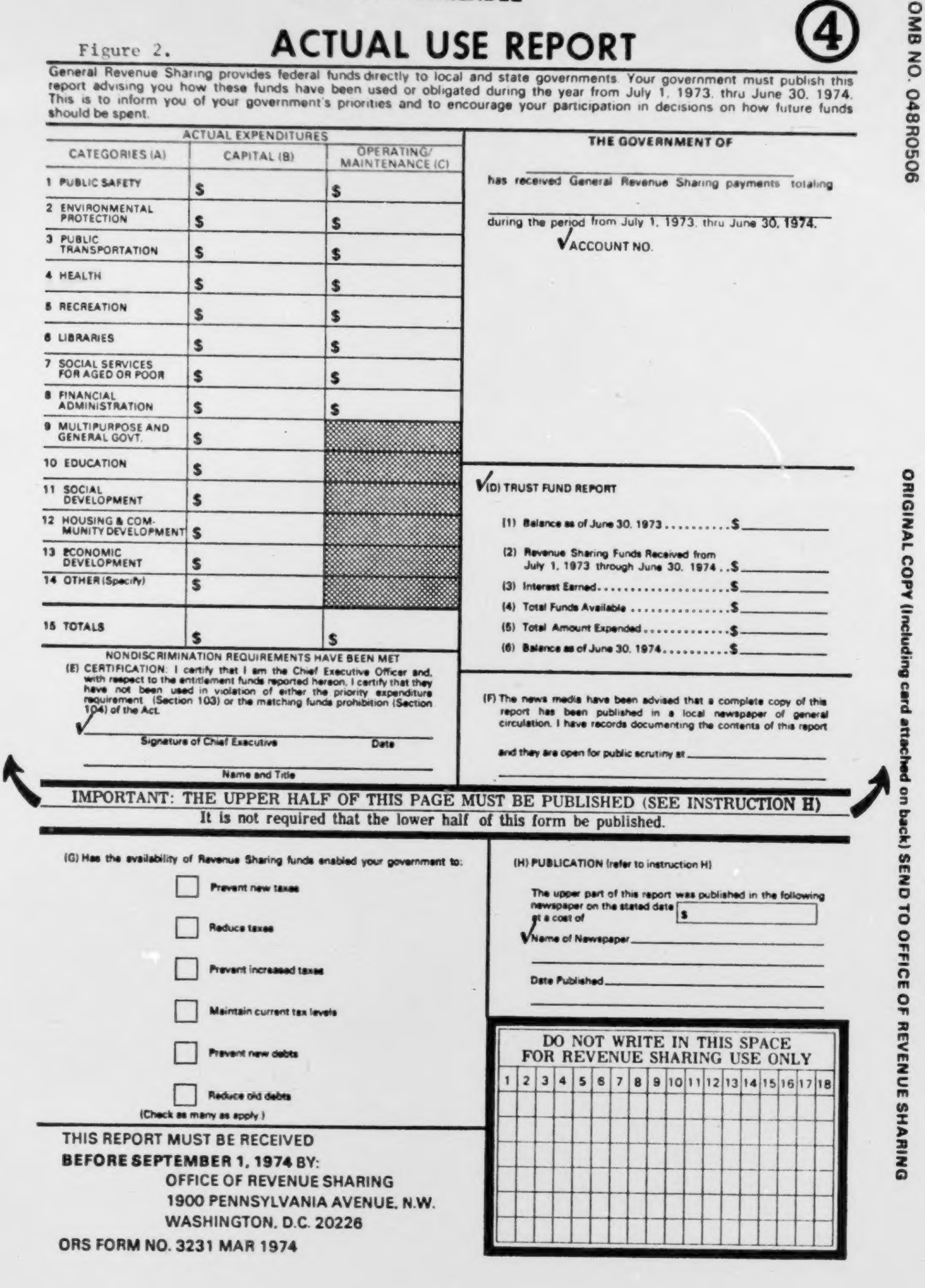
Figure 2.



④

OMB NO. 048R0506

ACTUAL USE REPORT

General Revenue Sharing provides federal funds directly to local and state governments. Your government must publish this report advising you how these funds have been used or obligated during the year from July 1, 1973, thru June 30, 1974. This is to inform you of your government's priorities and to encourage your participation in decisions on how future funds should be spent.

	ACTUAL EXPENDITURES	
CATEGORIES (A)	CAPITAL (B)	OPERATING/ MAINTENANCE (C)
1 PUBLIC SAFETY	$	$
2 ENVIRONMENTAL PROTECTION	$	$
3 PUBLIC TRANSPORTATION	$	$
4 HEALTH	$	$
5 RECREATION	$	$
6 LIBRARIES	$	$
7 SOCIAL SERVICES FOR AGED OR POOR	$	$
8 FINANCIAL ADMINISTRATION	$	$
9 MULTIPURPOSE AND GENERAL GOVT.	$	▨
10 EDUCATION	$	▨
11 SOCIAL DEVELOPMENT	$	▨
12 HOUSING & COMMUNITY DEVELOPMENT	$	▨
13 ECONOMIC DEVELOPMENT	$	▨
14 OTHER (Specify)	$	▨
15 TOTALS	$	$

THE GOVERNMENT OF ____________

has received General Revenue Sharing payments totaling ____________

during the period from July 1, 1973, thru June 30, 1974.

✓ACCOUNT NO.

✓(D) TRUST FUND REPORT

(1) Balance as of June 30, 1973 .... $________

(2) Revenue Sharing Funds Received from July 1, 1973 through June 30, 1974 .. $________

(3) Interest Earned .... $________

(4) Total Funds Available .... $________

(5) Total Amount Expended .... $________

(6) Balance as of June 30, 1974 .... $________

NONDISCRIMINATION REQUIREMENTS HAVE BEEN MET

(E) CERTIFICATION: I certify that I am the Chief Executive Officer and, with respect to the entitlement funds reported hereon, I certify that they have not been used in violation of either the priority expenditure requirement (Section 103) or the matching funds prohibition (Section 104) of the Act.

✓ ____________________ ________

Signature of Chief Executive Date

____

Name and Title

(F) The news media have been advised that a complete copy of this report has been published in a local newspaper of general circulation. I have records documenting the contents of this report and they are open for public scrutiny at ____________

____

IMPORTANT: THE UPPER HALF OF THIS PAGE MUST BE PUBLISHED (SEE INSTRUCTION H)

It is not required that the lower half of this form be published.

(G) Has the availability of Revenue Sharing funds enabled your government to:

☐ Prevent new taxes

☐ Reduce taxes

☐ Prevent increased taxes

☐ Maintain current tax levels

☐ Prevent new debts

☐ Reduce old debts

(Check as many as apply.)

(H) PUBLICATION (refer to instruction H)

The upper part of this report was published in the following newspaper on the stated date at a cost of $ ________

✓Name of Newspaper ____________

____

Date Published ____________

____

DO NOT WRITE IN THIS SPACE
FOR REVENUE SHARING USE ONLY

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18

THIS REPORT MUST BE RECEIVED
BEFORE SEPTEMBER 1, 1974 BY:
OFFICE OF REVENUE SHARING
1900 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20226

ORS FORM NO. 3231 MAR 1974

ORIGINAL COPY (including card attached on back) SEND TO OFFICE OF REVENUE SHARING

Both reports must be published by recipients in a newspaper of general circulation in the area before they are submitted to ORS. They must also be made available to other media, including minority and non-English-speaking media.[76] Since there is no time limit between publication and submission, the public has little, if any, opportunity to comment on the reports before they are forwarded to ORS.[77] This, of course, assumes that the citizenry can make informed judgments on budget decisions from reports that describe only a small part of total resources available. Even so, planned use reports may not represent any serious thinking on the part of local officials, since they do not have to be submitted to the local legislative body for prior approval.[78] Furthermore, there is nothing in the law to compel the local government to respond to public comment or even to spend money as shown on planned use reports.[79]

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[76] 31 C.F.R. §51.13 (Supp. 1973).

[77] Although there is little time lapse between the publication of planned use reports and their submission to ORS, ORS maintains there is ample opportunity for citizen review and comment before appropriations are enacted. ORS Comments. USCCR points out that the length of the time lapse would, of course, depend on the scheduling of the local budget cycle.

[78] In ORS' specific comments to USCCR's manuscript, it seems to dispute this statement. ORS characterizes the planned use report as "a condensed version of a portion of the local government budget." In ORS' general comments, however, it describes the planned use report as "speculative and unbinding /in/ nature." It maintains that "owing to the diversity of the fiscal year among the 39,000 recipient governments, many governments would not be legally able to commit their revenues at the particular time. In other words, at that particular point in the budget cycle, the only possible way in which the Planned Use Report would be filled out would be an educated guess by the Chief executive officer." ORS Comments.

A third method of public accountability lies within the normal budget process. State and local governments must provide for the expenditure of revenue sharing funds according to the laws and procedures applicable to their own revenues.[80] Where public hearings are held on the budget, revenue sharing is often included on the agenda. In some communities, special hearings have been held on revenue sharing. Historically, however, such hearings have not resulted in an effective public role in formulating plans and policies upon which budgets are based. Moreover, some communities simply lack any process for obtaining citizen input.[81]

Already existing local provisions for citizen participation can affect the degree of community involvement in revenue sharing spending decisions. According to one recent study, revenue sharing seems to have stimulated even more public interest in localities where citizen participation has always had a significant impact on the budget. Where citizen inputs have been minimal or nonexistent, however, revenue sharing has not necessarily heralded significant changes in the status quo.[82]

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[79] ORS argues that when planned and actual use reports differ, it "means the public involvement process is functioning." ORS Comments. USCCR notes that planned use reports cover funds received for a single entitlement period. However, because revenue sharing money does not have to be spent for 2 years, recipients are not required to give a separate accounting for expenditure of funds received for each entitlement period. Therefore, no mathematically precise comparison can be made between planned and actual use reports to determine if money was spent as originally planned.

[80] 31 U.S.C. §1243(a)(4). Because of this requirement ORS contends that revenue sharing provides "new and innovative" ways for holding public officials accountable. ORS Comments.

[81] Ibid., p. 81. In addition, there are at least 4 State legislatures that either hold closed hearings or no hearings at all. Council of State Governments, Budgeting by the States (Chicago, 1967), Table IX.

In sum, little in the act or regulations promotes citizen participation or requires State or local officials to make an adequate public accounting of revenue sharing expenditures. The lack of firm methods of public accountability places a greater responsibility on the local electorate to take the initiative. The effectiveness of citizens' contributions will depend upon their familiarity with all the functions of their government. Decisions on revenue sharing will be influenced by budgetary demands for which other revenues are inadequate. The use of revenue sharing funds will also free up other funds that may be used in a variety of ways. In short, revenue sharing should not be viewed as separate and apart from other governmental activities.

One impediment to effective participation is the very means by which public opinion is solicited. Budget hearings are generally held toward the end of the process when most decisions have already been made by chief executives, agency heads, and legislators. Consequently, they offer little opportunity for input from the public. Involvement must take place throughout the budget process when priorities are being set and programs are being determined. This requires an understanding of the planning and budgeting process.

The Budget Process

The importance of a government's budget cannot be underestimated. In preparing, reviewing, and enacting the budget, administrators and legislators evaluate the numerous demands upon public funds and determine the balance among various program activities. These decisions represent the relative importance attached to the many social, political, and economic forces operating in the community, including the needs and interests of minorities and women. In essence, the budget is policy translated into dollars and cents.

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[82] Advisory Commission on Intergovernmental Relations, An ACIR Re-evaluation, p. 17.

State and local governments typically have two types of budgets: operating and capital. Capital expenditures include expenses for the acquisition of land, building, machinery, furniture, and other equipment. All other expenses, such as staff salaries and maintenance costs, are operating expenditures. The operating budget is usually prepared annually and the capital budget normally covers 5 or 6 years.[83]

Operating and capital expenditures have very different effects on the budget. Operating expenditures, once undertaken, become relatively fixed commitments that generally are maintained at a fairly stable level year after year. Capital expenditures, on the other hand, fluctuate depending upon governmental priorities in a particular year. They increase sharply when a major construction project is undertaken but may be delayed or eliminated if other items in the budget are considered more important.

Despite their dissimilarities, operating and capital budgets are interrelated. Capital projects affect future operating budgets because new facilities must be staffed and maintained. Capital expenditures also influence the amount of money available for operating expenses.

The budget-making process shows some similarities among State and local governments. Variations on the basic outline depend on a number of factors, including the number and type of services provided and the size and character of the population served. The division of responsibility between the chief executive officer and the legislative body for policymaking and program operation also

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83. In States where the legislature meets every other year the operating budget may be for 2 years.

affects the amount of influence each has on the budget. (Tables 7 through 9 describe the division of responsibility for budget preparation and related matters according to the type of government.)

The budget process begins several months before the start of a new fiscal year when the budget or chief executive officer transmits budget request forms to the various government agencies or departments. The chief executive may also issue a statement outlining the general policy to be followed in preparing budget requests.

The budget officer collects and analyzes the forms and prepares a budget document for the legislative body. This document may include summary information, details on requests, recommendations, and justifications for requesting new programs or positions. Presentation of the actual appropriations proposed is usually organized into major categories in one of several ways: by function (education, health, welfare), fund (general fund, special funds), department or agency, or agency type.

The budget document is transmitted to the legislative body, which reviews and revises it. During this time public hearings are usually held. Once a budget is approved by the legislature, it is sent to the chief executive, who in turn may have the power to veto any part or all of it. Normally this veto may be overriden by at least a majority of the legislature.

The involvement of minorities and women not only at public hearings but throughout the budget process is essential to a democratic society. This can be accomplished through participation on citizen committees that have review authority over planning activities and proposed expenditures and in many other ways.

Women and racial and ethnic group people are minorities in socioeconomic status but majority in number. They are a constituency State and local governments cannot easily ignore. Budget planning

Table 7. City Budgetary Practices, by Form of Government

	Percent, by Region								
Form of Government	North-east	North Central	South	West	Total	Title of Chief Executive	Legislative Body	Person Responsible for Budget Preparation	Does Chief Executive Generally Have Veto Power?
Mayor-Council	51	55	35	29	44				
"Weak" Mayor						Mayor	City Council	Committee of the Council	Yes
"Strong" Mayor						Mayor	City Council	Mayor or Administrative Officer	Yes
Council-Manager	34	37	58	68	47	City Manager	City Council	City Manager	No
Commission Plan	5	7	7	3	6	Mayor	Commission	Commissioner of Finance	No
New England Town Meeting	10	1	*	0	3	President or Manager	Citizens	Finance Committee	No

*Less than 0.5 percent.

Sources: Charles R. Adrian and Charles Press, Governing Urban America (New York: McGraw-Hill Book Co., 1968) and International City Management Association, The Municipal Yearbook: 1972 (Washington, D.C., 1972).

Table 8. County Budgetary Practices, by Form of Government

Form of Government	Percent, by Area			Title of Chief Executive	Legislative Body	Person Responsible for Budget preparation	Does Chief Executive Generally Have Veto Power?
	Metro-politan	Nonmetro-politan	Total				
Plural Executive (Commission)	59	84	80	Chairman of the Board or County Judge	(Board of County Commissioners, Board of Supervisors, County Court are among the more common names given county legislative bodies. The names vary by State, not necessarily by type of county government.)	County clerk, treasurer, or auditor	No
County Administrator	35	15	18	Administrator or Manager		Administrator or Manager	No
County Executive	6	1	2	—			
"Strong"				Executive-Elected		Executive	Yes
"Weak"				Executive-Appointed		Executive	No

Sources: Advisory Commission on Intergovernmental Relations, Profile of County Government (January 1972) and National Association of Counties, From America's Counties Today (Washington, D.C., 1973).

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Table 9. STATE BUDGETARY PRACTICES

State or other jurisdiction	Budget-making authority	Official or agency preparing budget	Date estimates must be submitted by dept. or agencies	Date submitted to Legislature	Power of Legislature to change budget*	Power of item veto by Governor	Fiscal year begins	Frequency of budget
ALABAMA..........	Governor	Division of the Budget in Dept. of Finance	Feb. 1 preceding each regular session	By the 5th day regular business session	Unlimited	Yes	Oct. 1	Biennial (a)
ALASKA............	Governor	Division of Budget and Management, Dept. of Administration	Oct. 1	3rd legislative day of session	Unlimited	Yes	July 1	Annual
ARIZONA...........	Governor	Dept. of Administration	Sept. 1 each year	By the 5th day of regular session	Unlimited	Yes	July 1	Annual
ARKANSAS.........	Legislative Council	Office of Budget, Dept. of Finance and Administration	Sept. 1 in even years	Date of convening session	Unlimited	Yes	July 1	Biennial (a)
CALIFORNIA.......	Governor	Budget Division, Dept. of Finance	Oct. 1	Jan. 10	Unlimited	Yes	July 1	Annual
COLORADO.........	Governor	State Budget Director, Executive Budget Office, Dept. of Administration	Aug. 1-15	10th day of session	Unlimited	Yes	July 1	Annual
CONNECTICUT.....	Governor	Managing Director, Planning & Budgeting Div., Dept. of Finance and Control	Sept. 1	1st session day after Feb. 14	Unlimited	Yes	July 1	Annual
DELAWARE.........	Governor	Office of Budget Director	Sept. 15; schools, Oct. 15	By 5th day of session	Unlimited	Yes	July 1	Annual
FLORIDA...........	Governor	Div. of Budget, Dept. of Administration	Nov. 1 each year	30 days prior to regular session	Unlimited	Yes	July 1	Annual
GEORGIA...........	Governor	Budget Div., Office of Planning & Budget	Sept. 1	By 5th day of session or sooner	Unlimited	Yes	July 1	Annual
HAWAII.............	Governor	Budget, Planning and Management Division, Dept. of Budget and Finance	July 31, even years	3rd Wed. in Jan. of odd years, 20 days in advance to members of Legislature	Unlimited	Yes	July 1	Biennial(a)
IDAHO..............	Governor	Administrator, Division of the Budget	Aug. 15 before Jan. session	Not later than 5th day of session.	Unlimited	Yes	July 1	Annual
ILLINOIS...........	Governor	Bureau of the Budget	Specific date for each agency set by Bureau of the Budget	First Wed. in March	Unlimited	Yes	July 1	Annual
INDIANA...........	Governor	Budget Agency(b)	Sept. 1 in even years, flexible policy	Within the 1st two weeks after the session convenes	Unlimited	No	July 1	Biennial(a)
IOWA................	Governor	Comptroller	Sept. 1	Feb. 1 or before	Unlimited	Yes	July 1	Biennial (a)
KANSAS............	Governor	Div. of the Budget, Dept. of Administration	Sept. 15 before even-year sessions; Oct. 1 before odd-year sessions	Within 3 weeks after convening of session in odd years and within 2 days after convening of session in even years	Unlimited	Yes	July 1	Annual
KENTUCKY.........	Governor	Office for Policy & Management, Exec. Dept. for Finance & Administration	Oct. 15	As Governor desires	Unlimited	Yes	July 1	Biennial(a)
LOUISIANA.........	Governor	Director, Budget & Management, Div. of Administration	Jan. 15 before annual session.	Not later than seventh day of each regular session. New Governor-elect, five-day grace period	Unlimited	Yes	July 1	Annual
MAINE..............	Governor	Bureau of the Budget, Dept. of Finance and Administration	Sept. 1 in even years	End of 2nd week of session or before	Unlimited	No	July 1	Biennial(a)
MARYLAND........	Governor	Secretary, Dept. of Budget and Fiscal Planning	Sept. 1	3rd Wed. of Jan., annually	Limited: Legislature may decrease but not increase except for own operating budget	Yes, supplementary appropriation bills	July 1	Annual

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Table 9. STATE BUDGETARY PRACTICES (cont.)

State or other jurisdiction	Budget-making authority	Official or agency preparing budget	Date estimates must be submitted by dept. or agencies	Date submitted to Legislature	Power of Legislature to change budget*	Power of item veto by Governor	Fiscal year begins	Frequency of budget
MASSACHUSETTS..	Governor	Budget Director, Div. of Fiscal Affairs, Executive Office for Administration and Finance	Set by administrative action	Within 3 weeks after convening of the General Court	Unlimited	Yes	July 1	Annual
MICHIGAN.........	Governor	Budget and Program Analysis Div., Dept. of Management & Budget	Set by administrative action	10th day of session	Unlimited	Yes	July 1	Annual
MINNESOTA........	Governor	Budget and Organization Division, Dept. of Administration	Oct. 1 preceding convening of Legislature	Within 3 weeks after inauguration of Governor	Unlimited	Yes	July 1	Biennial(a)
MISSISSIPPI........	Commission of Budget and Accounting(c)	Commission of Budget and Accounting	Aug. 1 preceding convening of Legislature	Dec. 15	Unlimited	Yes	July 1	Annual
MISSOURI..........	Governor	Div. of Budget, Office of Administration	Oct. 1	By the 30th day	Unlimited	Yes	July 1	Annual
MONTANA..........	Governor	Bureau of the Budget, Dept. of Administration	Aug. 1 of year before each session	1st day of session	Unlimited	Yes	July 1	Biennial(a)
NEBRASKA.........	Governor	Budget Administrator, Dept. of Administrative Services	Not later than Sept. 15	30th day of regular session	Limited: three-fifths vote required to increase Governor's recommendations; majority vote required to reject or decrease such items	Yes	July 1	Annual
NEVADA............	Governor	Budget Director, Budget Division, Dept. of Administration	Sept. 1	10th day of session or before	Unlimited	No	July 1	Biennial(a)
NEW HAMPSHIRE..	Governor	Comptroller, Dept. of Administration and Control	Oct. 1 in even years	Feb. 15 in odd years	Unlimited	No	July 1	Biennial(a)
NEW JERSEY.......	Governor	Director of Division of Budget and Accounting of Dept. of the Treasury	Oct. 1	Third Tuesday after opening of session	Unlimited	Yes	July 1	Annual
NEW MEXICO......	Governor	Budget Division, Dept. of Finance and Administration	Sept. 1	On or before 25th day of regular session	Unlimited	Yes	July 1	Annual
NEW YORK.........	Governor	Division of Budget, Executive Dept.	Early in Sept.	Second Tuesday following the first day of the annual session, except on or before Feb. 1 in years following gubernatorial election	Limited: May strike out items, reduce items or add separate items of expenditure	Yes	April 1	Annual
NORTH CAROLINA.	Governor	Office of State Budget, Dept. of Administration	Sept. 1 preceding session	1st week of session	Unlimited	No	July 1	Biennial(a)
NORTH DAKOTA...	Governor	Director, Dept. of Accounts and Purchases	July 15 in even years; may extend 45 days	December 1, prior to biennial session	Unlimited	Yes	July 1	Biennial
OHIO...............	Governor	Office of Budget & Management	Nov. 1	3rd week in Jan. in odd years unless change in Governor; then Mar. 15	Unlimited	Yes	July 1	Biennial(a)
OKLAHOMA.........	Governor	Director of State Finance, Div. of Budget	September 1	Immediately after convening of regular legislative session; an incoming Governor, following inaugural	Unlimited	Yes	July 1	Annual

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Table 9. STATE BUDGETARY PRACTICES (cont.)

State or other jurisdiction	*Budget-making authority*	*Official or agency preparing budget*	*Date estimates must be submitted by dept. or agencies*	*Date submitted to Legislature*	*Power of Legislature to change budget**	*Power of item veto by Governor*	*Fiscal year begins*	*Frequency of budget*
OREGON	Governor	Budget Division, Executive Dept.	Sept. 1 in even year preceding legislative year	Dec. 1 in even year preceding legislative year	Unlimited	Yes	July 1 in odd years	Biennial
PENNSYLVANIA	Governor	Budget Secretary, Governor's Office of Administration	Nov. 1, each year	As soon as possible after organization of General Assembly	Unlimited	Yes	July 1	Annual
RHODE ISLAND	Governor	Division of Budget, Department of Administration	Sept. 1	24th day of session	Unlimited	No	July 1	Annual
SOUTH CAROLINA	State Budget and Control Board(d)	Finance Division of State Budget and Control Board	Sept. 15 or discretion of Board	2nd Tues. in Jan.	Unlimited	Yes	July 1	Annual
SOUTH DAKOTA	Governor	State Budget Officer	Oct. 15	5 days before session	Unlimited	Yes	July 1	Annual
TENNESSEE	Governor	Budget Div., Dept. of Finance & Administration	Dec. 1	Jan. 14 or before unless change in Governor; then Mar. 1 or before	Unlimited	Yes	July 1	Annual
TEXAS	Governor, Legislative Budget Board	Exec. Budget Director, Office of Governor; Legislative Budget Board	Date set by Budget Director and Legislative Board	5th day of session or before	Unlimited	Yes	Sept. 1	Biennial(a)
UTAH	Governor	Division of Budget, Dept. of Finance	Sept. 15	After convening of Legislature, 3 days regular session; 1 day budget session	Unlimited	Yes	July 1	Annual
VERMONT	Governor	Commissioner, Dept. of Budget & Management; Agency for Administration	Sept. 1	3rd Tues. in Jan.	Unlimited	No	July 1	Annual
VIRGINIA	Governor	Director, Division of the Budget, Office of Administration	Aug. 15 in odd years	Within 5 days after conv. of regular session on 2nd Wed. in Jan. in even years	Unlimited	Yes	July 1	Biennial(a)
WASHINGTON	Governor	Director, Office of Program Planning and Fiscal Management	Date set by Governor	20th day of December prior to session	Unlimited	Yes	July 1	Biennial
WEST VIRGINIA	Governor	Division of Budget, Dept. of Finance and Administration	Aug. 15	10 days after convening of session or before	Limited: May not increase items of budget bill except appropriations for Legislature and judiciary	Yes	July 1	Annual
WISCONSIN	Governor	Bureau of Planning and Budget, Dept. of Administration	Date set by Director, Bureau of Planning and Budget	Feb. 1 in odd years or before	Unlimited	Yes	July 1	Biennial(a)
WYOMING	Governor	Dept. of Administration and Fiscal Control	Oct. 1 preceding session in Jan.	Within 5 days after beginning of session	Unlimited	Yes	July 1 in odd years	Biennial

*Limitations listed in this column relate to legislative power to increase or decrease budget items generally. Specific limitations, such as constitutionally earmarked funds or requirement to enact revenue measures to cover new expenditure items, are not included.

(a) The budget is adopted biennially, but appropriations are made for each year of the biennium separately. Minnesota: a few appropriations are made for the biennium; Montana: supplemental appropriations are considered by the Legislature annually; Virginia: increases or decreases may be made in the second legislative session; Wisconsin: statutes authorize an annual budget review, and the Governor may in even years recommend changes.

(b) Budget Committee serves in advisory capacity.

(c) Composition of Commission: Governor as ex officio Chairman, Lt. Governor, Chairman House Ways and Means Committee, Chairman House Appropriations Committee, Chairman Senate Finance Committee, President Pro Tem of Senate, Chairman Senate Appropriations Committee, one member of Senate appointed by Lt. Governor, Speaker of House, two House members appointed by the Speaker.

(d) Composition of Board: Governor as Chairman, Treasurer, Comptroller General, Chairman Senate Finance Committee, Chairman House Ways and Means Committee.

Source: Council of State Governments, The Book of the States, 1974-75 (Lexington, Ky., 1974).

and preparation provides an occasion to reevaluate current activities, to search out and identify new problems, and to suggest new activities to meet changing needs and priorities. As representatives of the people, it is incumbent upon State and local officials to be mindful of the views of all the electorate.

Chapter 4

Civil Rights Provisions

The Revenue Sharing Act prohibits State and local governments from spending shared revenues for programs or activities in which discrimination is practiced. Specifically, the act states:

> No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program *or* activity funded *in* whole or *in* part with /revenue sharing/ funds....[84]

The Director of the Office of Revenue Sharing (ORS) is empowered to seek compliance with its provisions and to take appropriate administrative action after determining that a recipient government has violated nondiscrimination provisions.

Discriminatory Acts Prohibited

ORS regulations list types of discriminatory acts that are prohibited. These provisions apply equally to programs undertaken by the recipient directly or through contractual or other arrangements. They include:

1. Denying any service or other benefit which is provided to others.

2. Providing any service or benefit which is different from that provided to others.

3. Subjecting persons to segregated or separate treatment in any facility or in any process related to the receipt of any benefit or service.

4. Restricting the enjoyment of any advantage or privilege enjoyed by others.

5. Treating an individual differently from others in determining admission, enrollment, or other conditions which must be met in order to receive a benefit or service.

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[84] 31 U.S.C. §1242(a).

6. Denying equal employment opportunity.

7. Utilizing criteria or methods of administration which would subject individuals to discrimination or substantially impair accomplishment of the objectives of the program with respect to minorities or women.

8. Determining the site or location of facilities which have the effect of excluding individuals from or denying them the benefits of an activity or program, or otherwise subjecting them to discrimination.

These provisions do not prevent the recipient government from taking action to overcome the effects of prior discrimination in services or facilities provided to a geographic area or specific group of persons.[85]

The descriptions of prohibited discriminatory acts are generally rather broad, making it difficult for people to relate them to specific situations. This might be remedied by giving examples of each type of discriminatory act, such as:

1. Refusing to dispense medical aid to minorities in a health program or refusing to permit girls and women to participate in sports activities at a recreation facility.

2. Collecting garbage three times a week in white neighborhoods, but only once a week in black neighborhoods; or denying complete medical services for women (including gynecological care) in a health program, but providing comprehensive services for men.

3. Assigning children of different ethnic or racial groups to different classes in an otherwise integrated school or establishing separate training classes for men and women in a job training center.

4. Keeping libraries open for shorter hours in minority than white neighborhoods or maintaining shorter hours of access to recreational facilities for women than for men.

5. Using different criteria for admitting whites and blacks to a day care center for welfare children or using different criteria for admission of women and men to vocational training classes.

6. Failing to employ women in certain positions, such as firefighters, police officers, or supervisors.

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[85] 31 C.F.R. §51.32(b) (Supp. 1973).

7. Using written tests or physical requirements (such as height, weight, endurance) that are not necessary to the job but which exclude many minorities and women.

8. Building a recreation center in an Anglo neighborhood, but not doing so in a black, Mexican American, Puerto Rican, or Asian American neighborhood.

The regulations are also not explicit enough in describing actions that constitute sex discrimination. Certain activities affect women as a group differently from racial and ethnic minorities. For example, a training or employment program for minorities and women that does not provide day care facilities discourages women, both minority and white, from enrolling in training or seeking employment. Detailing such distinctions for State and local officials is important since prohibitions against sex discrimination are fairly new to Federal aid programs.[86]

Compliance Mechanisms

Federal regulations enumerate three mechanisms that may be employed by ORS to assure compliance with civil rights laws. First, before making any revenue sharing payments, ORS requires Governors of all States and chief executive officers of local governments to file a statement of assurance that they will comply with nondiscrimination requirements.[87] ORS also investigates complaints filed by

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86. ORS states, since "sex discrimination prohibitions are fairly new to Federal aid programs, /it/ is monitoring closely the draft regulations currently being examined by other Federal agencies. /It/ plans to deal with such problem areas as identified rather than to attempt to draft extensive regulatory distinctions for State and local officials." ORS Comments. The USCCR maintains that ORS could choose to exercise leadership in this area and clarify what constitutes sex discrimination for the purposes of the revenue sharing program. Regulations could be guided by the current state of Federal law and modified as necessary.

87. 31 C.F.R. §51.32(c) (Supp. 1973).

persons who have been subjected to discrimination[88] but may conduct compliance reviews without first receiving complaints.[89]

All of these methods have shortcomings. Written assurances are the least effective way of guaranteeing compliance. Few officials would admit to practicing discrimination if this threatens future entitlements. The history of this form of "paper compliance" in Veterans Administration housing, hospitals, welfare programs, aid to education for the disadvantaged, and other federally-assisted programs shows that discriminatory practices continue even as State and local officials certify their compliance with the law.[90]

The complaint mechanism similarly does not insure nondiscrimination. The number of complaints filed by private citizens is not a reliable measure of the prevalence of discrimination. Many citizens are not familiar with the law or complaint procedures. One reason for this was given by Graham W. Watt, Director of the Office of Revenue Sharing, before the Subcommittee on Civil Rights and Constitutional Rights of the House Judiciary Committee on September 6, 1973.

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[88] 31 C.F.R. §51.32(d) (Supp. 1973).

[89] 31 C.F.R. §51.32(e) (Supp. 1973).

[90] U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--A Reassessment (Washington, D.C.: Government Printing Office, 1973), p. 149; U.S. Commission on Civil Rights, Title VI...One Year After (Washington, D.C.: Government Printing Office, 1966), p. 7. See also Title VI of the Civil Rights Act of 1964--Implementation and Impact, 36 Geo. Wash. L. Rev. 972, 982-987 (1968) and Washington Research Project and NAACP Legal Defense and Educational Fund, Title I of ESEA: Is It Helping Poor Children?, rev. 2d ed. (n.p., 1969).

As Mr. Watt testified, ORS had made no special effort at that time to inform the public of appropriate complaint procedures.[91] It was not until November 1974 that ORS published a manual describing civil rights safeguards available under the Revenue Sharing Act. This publication, entitled General Revenue Sharing and Civil Rights, covers procedures for filing complaints and actions ORS takes in seeking compliance.

Even if the public is aware of these procedures, victims of discrimination may still be reticent. They may fear reprisal if they file a complaint. Furthermore, the lack of money for legal help discourages many women and minority persons. Finally, some people simply feel that any remedy would be too slow in coming. Nevertheless, ORS has been relying chiefly on[92] complaints to bring examples of discrimination to its attention.

As of June 1, 1974, a year and a half after revenue sharing was signed into law, the Office of Revenue Sharing had received only 41 complaints involving discrimination.[93] About half of these were filed by organizations[94] that presumably possess greater familiarity with the law than the individuals they represent.

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[91] Where such efforts to inform the public have taken place, there has been a dramatic increase in the number of complaints. For example, the number of complaints received by the Department of Housing and Urban Development concerning fair housing doubled following such a campaign. U.S. Commission on Civil Rights, Enforcement Effort--A Reassessment, p. 111.

[92] ORS does not concur in this discussion of the shortcomings of written assurances and reliance upon complaints in enforcing civil rights laws. In its written comments, ORS outlined 5 major elements of its compliance program. These include:

a) "making it simple as possible for each government to comply with the Act's requirements."

b) making sure "recipient governments know what to do to comply with the Act."

c) "developing a compliance system that includes maximum use of existing State and private audits of /revenue sharing recipients/."

d) cooperating with Federal agencies and citizens and civil rights organizations.

e) "/i/f noncompliance is found, /working/ closely with that government to achieve voluntary corrective action /before attempting/ to recover funds or institute court action...." ORS Comments.

For example, in one complaint the Afro-American Patrolmen's League and the Chicago chapter of the NAACP alleged that the Chicago Police Department, which receives the bulk of that city's revenue sharing funds ($69.7 million of $95.1 million for calendar year 1973), discriminates against blacks and the Spanish speaking in hiring practices, promotions, work assignments, and disciplinary actions. In Ouachita Parish, Louisiana, the Lawyers' Committee for Civil Rights Under Law filed a complaint on behalf of several black residents charging that municipal services supported by revenue sharing are denied to blacks living in the parish.[95]

A third means for assuring compliance with civil rights laws is conducting compliance reviews. Compliance reviews are onsite, indepth investigations of a government, performed to determine whether it is in compliance with Federal civil rights laws. These reviews require a great deal of time for investigating facts, interviewing people, and corroborating evidence. Because the reviews are so detailed they are the most effective way of determining compliance;

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[93] Statement of Graham W. Watt, Director, Office of Revenue Sharing, before the Senate Subcommittee on Intergovernmental Relations, Committee on Government Operations, June 4, 1974.

[94] Interview with Robert Murphy, Compliance Manager, Office of Revenue Sharing, Department of the Treasury, April 3, 1974. At that time 36 civil rights complaints had been filed with ORS.

[95] ORS feels these complaints are "atypical." The Justice Department intervened in the Chicago case. Moreover, as of the date of ORS' comment, the Ouachita Parish complaint was the only one filed by the Lawyers' Committee for Civil Rights Under Law. ORS, however, does not question that the NAACP and the Lawyers' Committee are familiar with the nondiscrimination provisions of the Revenue Sharing Act. ORS Comments.

but they also consume a significant amount of staff time.[96] Reviews of even a token number of the 39,000 State and local revenue sharing recipients each year would require a fairly large staff.[97] As of mid-October 1974, the ORS compliance division had a complement of 30 staff positions, only 4 of which were occupied by civil rights specialists.[98] This staff is responsible for compliance with all provisions of the act, including civil rights. Most reviews to determine civil rights compliance, therefore, can only be very cursory.

In fact, ORS has made little progress toward formulating plans to conduct systematic compliance reviews. In early 1973, with the assistance of staff temporarily borrowed from other Federal agencies, ORS visited 103 jurisdictions that are among those receiving the

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96. For example, the Law Enforcement Assistance Administration estimates that 100 person-days are required to conduct a compliance review in a typical large police department. See U.S. Commission on Civil Rights, Enforcement Effort--A Reassessment, p. 341. In order to complete an equal educational services compliance review of a large school district, the Office for Civil Rights regional office of the Department of Health, Education, and Welfare may consume more than 200 person-days. U.S. Commission on Civil Rights, Toward Quality Education for Mexican Americans (Washington, D.C.: Government Printing Office, 1974), p. 56.

97. The Department of Health, Education, and Welfare as of June 1972 employed nearly 180 professional staff members who spent more than half their time on enforcement of Title VI of the Civil Rights Act of 1964 in elementary and secondary education. U.S. Commission on Civil Rights, Enforcement Effort--A Reassessment, p. 201. At that time, there were approximately 17,500 public school systems throughout the Nation. HEW considered this staff size clearly inadequate, and 350 additional positions were requested.

98. Most of the remaining positions that have been filled are occupied by auditors. The 30 compliance positions authorized by Congress fall short of the 51 requested by ORS. Nevertheless, within the staffing limitations imposed by Congress, ORS can employ any combination of people with different specialties. ORS' emphasis is clearly on enforcement of audit requirements.

largest revenue sharing allocations.[99] Although ORS refers to these as compliance reviews, they were more for the purpose of signifying to recipients that ORS was prepared to enforce the law and to explain to recipients their obligations under the law.[100]

Several circumstances surrounding these visits suggest that there was no intention to perform an in-depth civil rights investigation. Each locality was visited by two people for only 1 day.[101] This is by no means sufficient time or personnel to complete a full compliance review. Moreover, the major part of the visits was devoted to matters relating to audit procedures, financial reporting, budgeting, and appropriations processes rather than to civil rights.

Coverage of civil rights concerns was inadequate. First, data collection methods were naive. Questions about civil rights mechanisms and procedures were directed only to State and local officials. There was no attempt to corroborate their responses with local community leaders or to observe firsthand the programs funded by revenue sharing, as would be done in a normal compliance review.

In addition, the data collected were insufficient. For example, recipients were asked for a racial and ethnic count of employees in programs funded by revenue sharing. A similar enumeration by sex was not requested even though sex discrimination is expressly prohibited by the Revenue Sharing Act.[102]

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[99] These 103 government units (including all 50 State governments) receive slightly more than one-half of all revenue sharing funds.

[100] Commission staff interview with Dr. Robert Murphy, Compliance Manager, ORS, July 9, 1973.

[101] Department of the Treasury, Office of Revenue Sharing, Compliance by the States and Large Urban Jurisdictions--Initial Report (Washington, D.C.: Government Printing Office, 1973), p. 3.

[102] ORS feels that this description of the circumstances surrounding its compliance visits to the 103 jurisdictions receiving the largest allocations misconstrues the purpose of those visits. ORS Comments.

Remedies Available Through ORS

Even if ORS were to determine that a recipient is in violation of civil rights provisions, the procedures set forth in its regulations for seeking compliance are rather long and involved.[103] First, the chief executive officer of the government and the Governor of the State are notified. The Governor has 60 days to secure compliance. If the Governor fails or refuses to secure compliance, the Director of ORS may do one of several things:

1) refer the matter to the Attorney General for possible legal action;

2) exercise the powers, functions, and administrative remedies of Title VI of the Civil Rights Act of 1964;[104] or

3) take other action authorized by law.

ORS regulations spell out in detail the steps it will take in seeking compliance pursuant to Title VI of the Civil Rights Act of 1964. A second notice is sent to the offending recipient, followed by at least 10 days during which additional efforts to seek compliance with civil rights laws may be made by ORS. If these efforts fail, the recipient has the opportunity to appear before an administrative law judge[105] for a formal hearing. An adverse decision by the administrative law judge can be appealed first to the Secretary of the Treasury and then to the U.S. Circuit Court of Appeals.

If the recipient refuses to comply and has exhausted all avenues of appeal, ORS must then file a report with the House Ways and Means Committee and the Senate Finance Committee setting forth the circumstances and reasons in support of fund termination. Thirty days are allowed for the committees to review the report before action is finally taken. The very length and complexity of these procedures are intended to provide due process for revenue sharing recipients. The need to redress discrimination speedily, however, is equally important and deserves greater consideration.

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[103] 31 C.F.R. §51.32(f) (Supp. 1973).

[104] Title VI states that the Federal Government may terminate or refuse to grant or continue assistance to a recipient when, after opportunity for a hearing, it is determined that the recipient has violated nondiscrimination requirements.

[105] Administrative law judges, who may not necessarily be lawyers, are usually appointed by the U.S. Civil Service Commission. They have the power to administer oaths, take evidence, hear oral arguments, and make an initial decision in the case.

After completing this process, a revenue sharing recipient found in noncompliance is required to repay the amount of money spent on a project or activity in which discrimination was found. Furthermore, the recipient receives no more revenue sharing money until the Secretary of the Treasury is satisfied that it has begun to observe civil rights rules and regulations. The financial penalty for civil rights violation, however, is not as harsh as that for violating "priority expenditure" restrictions. A local government must pay 110 percent of the amount spent in nonpriority areas.[106]

As of the beginning of April 1974, ORS had not begun any administrative proceedings against any government for discrimination in the use of revenue sharing funds. This does not mean, however, that discrimination had not existed. In fact, a suit was brought against ORS and the Department of the Treasury by the Afro-American Patrolmen's League and the Chicago branch of the NAACP.

The suit alleged that ORS had failed to comply with its own regulations because it had not initiated effective administrative action in response to a complaint. The complaint charged that the Chicago police department, which receives revenue sharing money, discriminates against blacks and Spanish-surnamed persons in hiring and promotion practices. Contrary to the regulations, neither the Governor of Illinois nor the Mayor of Chicago were even notified of the city's noncompliance. On April 4, 1974, a Federal district

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106. 31 C.F.R. §51.31(c) (Supp. 1973).

court ruled that ORS must begin administrative proceedings immediately.[107]

The Philosophy Guiding ORS' Civil Rights Compliance Effort

ORS' rather passive approach to civil rights compliance can perhaps be attributed to the philosophy under which it operates. ORS maintains that its compliance responsibilities far exceed those of other Federal agencies by virtue of the amount of money it disburses ($30.2 billion over 5 years) and the number of eligible recipients to which it makes payments (39,000). It argues that if it were to proceed on the basis of suspected noncompliance, its compliance effort would be so substantial as to contradict Congress' intent to provide State and local governments with flexibility in the use of funds. Finally, ORS believes that "governments will comply with a law which they favor if they clearly know the nature of their responsibilities."[108]

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[107] Robinson v. Shultz, No. 74-248 (D.D.C., April 4, 1974). On April 9, ORS wrote the Mayor of Chicago that use of revenue sharing funds to support the city's police department violated nondiscrimination requirements and requested that negotiation of a consent decree be expedited in litigation already instituted by the Department of Justice. A letter was also sent to the Governor of Illinois asking for help to secure compliance. Later, ORS concluded that a voluntary compliance settlement was not possible. On May 22, 1974, ORS informed the Mayor of Chicago and the Governor of Illinois that the matter had been referred to the Justice Department. See Department of the Treasury news release, Office of Revenue Sharing, "Revenue Sharing Discrimination Case Referred to Justice," May 28, 1974. Also in question in this case was ORS' power temporarily to defer funds pending the outcome of an administrative hearing. The court ruled that ORS has such authority, which it can use at its own discretion. ORS, however, is opposed in practice to utilizing this means for seeking compliance with civil rights provisions. ORS feels this court action represents "the exception and not the rule." ORS Comments.

[108] ORS Comments.

Judicial and Federal administrative actions taken against State and local governments for violations of civil rights laws in employment and the provision of public services contradict ORS' assumption that awareness of responsibility and compliance with the law go hand in hand. Moreover, ORS' argument that a large compliance force would be contrary to congressional intent can be disputed. Congress meant to return greater freedom of choice to State and local officials--but within the restrictions set forth in the act. Thus, it is ORS' duty to assure that local spending decisions do not violate civil rights provisions regardless of the compliance effort it must sustain to do so. Operating under a misunderstanding of its own responsibility and State and local integrity in civil rights matters, ORS has devised a compliance program that may permit many violations to go unprosecuted simply because it does not look for them.

Court Remedies

Legal remedies may also be sought directly through the courts. Lawsuits may be initiated by any private citizen without first exhausting administrative remedies available through ORS. Further, if a pattern or practice of discrimination is clearly established, the Department of Justice can file court actions apart from ORS administrative proceedings. To date, the Department of Justice has neither filed a court suit nor entered an *amicus*[109] brief on behalf of revenue sharing plaintiffs.

In at least one community private citizens have initiated court action. This route was taken by blacks in Alton, Illinois, who through various subterfuges had been denied access to eligibility lists from which the city selected employees for the police and fire departments. The city council authorized the use of revenue sharing funds to increase the number of police officers and firefighters. There was no possibility that these new positions would be filled by blacks, since no black candidates were on the eligibility lists for appointment to the positions. In Morse v. Krepel, a Federal district court issued a restraining order prohibiting the city from making appointments from the existing eligibility list.[110]

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[109] A noninvolved party may file a separate *amicus curiae*, or "friend of the court," brief in which it states its position in support of one of the parties.

Cases such as this one are of particular significance because they show that revenue sharing can be a useful means for combating employment discrimination in State and local government. These units of government are among the largest and fastest-growing employers in the United States, with about 11 million workers on their payrolls.[111] Yet employment opportunities for minorities and women are restricted by discriminatory personnel actions. Barriers to equal employment have been especially severe in the fields of police and fire protection, where city governments are allocating about half of their revenue sharing money.[112]

Cases that strike down employment discrimination will ultimately affect the way government units utilize their revenue sharing funds.

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[110] C.A. No. S-CIV-73-31 (S.D. Ill., Nov. 20, 1973).

[111] For a detailed account of growth in State and local public employment, see International City Management Association, The Municipal Yearbook: 1971 (Washington, D.C.: International City Management Association, 1971), pp. 187-190. See also Executive Office of the President, Office of Management and Budget, Special Analyses, Budget of the United States Government, Fiscal Year 1975 (Washington, D.C.: Government Printing Office, 1974), p. 106, table G-4.

[112] Of the functions commonly performed by cities and towns, about two-fifths of the municipal work force is engaged in police and fire protection. International City Management Association, Municipal Yearbook: 1971, p. 188. For an analysis of discrimination in State and local governments, see U.S. Commission on Civil Rights. For All The People...By All The People (Washington, D.C.: Government Printing Office, 1969).

If minority persons and women are represented among those who make policy and administer programs, there will be a greater chance that those programs to which minorities and women assign high priority will be funded.

PART II

SPECIAL REVENUE SHARING

Special revenue sharing is a second response to some of the shortcomings of categorical aid programs. Under special revenue sharing, a number of categorical grant programs are consolidated into one program. Matching fund requirements and the necessity of submitting program plans or applications for approval are eliminated. The amount of money a particular jurisdiction receives is determined by a formula that takes into account appropriate factors.[113] Within a broad functional area, such as manpower training or community development, recipient governments are free to spend money according to their own priorities. As with general revenue sharing, the rationale is to put decisionmaking power into the hands of local officials, who presumably understand the needs of their communities better than the Federal Government.

While in office, President Nixon recommended that special revenue sharing measures be enacted in such areas as manpower, community development, education, and law enforcement. Congress has been willing to consider some of the grant consolidation and simplification features of special revenue sharing, but it has not been entirely receptive to relaxing Federal controls to the extent envisioned in the former President's proposals.

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[113] The consolidated grant may represent a decrease or increase over previous Federal aid levels depending on the total amount available for allocation to local communities and the allocation formula itself. The impact on minorities and women is also a concern where categorical aid programs with strong citizen participation requirements are replaced.

Chapter 1

Manpower Revenue Sharing

Of President Nixon's proposed special revenue sharing programs, manpower revenue sharing was the first to become law. Early in 1973, the administration expressed its intent to implement manpower revenue sharing without waiting for congressional authorization. The Department of Labor (DOL) issued directives[114] delegating substantially more decisionmaking power to State and local government officials over manpower programs authorized under the Manpower Development and Training Act of 1962 (MDTA) and the Economic Opportunity Act of 1964 (EOA).[115] Members of Congress questioned the authority of DOL to make such sweeping unilateral changes in manpower programs without its legislative guidance.[116]

Toward the end of the year, Congress passed a new manpower act incorporating some of the administration's special revenue sharing concepts. It gives State and local governments more flexibility in designing and implementing manpower programs, but it maintains some Federal control by requiring State and local officials to submit program plans to DOL for approval before receiving funds.

On December 28, 1973, former President Nixon signed the Comprehensive Employment and Training Act (CETA)[117] into law. CETA replaces MDTA, Title I of the EOA, and the Emergency Employment Act of 1971. The new act authorizes various programs for meeting manpower needs.

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[114] Interagency Cooperative Issuances Nos. 74-1 and 74-2.

[115] 42 U.S.C. §2571 et seq. and 42 U.S.C. §2701 et seq. respectively. Programs funded under these acts include counseling, training, job referral, and supportive services for those who are otherwise unable to retain long term employment.

[116] H.R. Rep. No. 93-288, 93rd Cong., 1st Sess. (1973), p. 4, and S. Rep. No. 93-414, 93rd Cong., 1st Sess. (1973), p. 9.

[117] Pub. L. 93-203 (Dec. 28, 1973) U.S. Code Cong. & Ad. News 925 (1973).

Title I deals with comprehensive manpower services to be provided by State and local governments; Titles II, III, and IV authorize special programs to be furnished by State and local sponsors and DOL.

Title I names States and local governments with a population of 100,000 or more as prime sponsors for comprehensive manpower services. The Secretary of Labor may also approve grants to otherwise ineligible units or combinations of units of government that either have exceptional needs or have had effective manpower programs in the past.

Eighty percent of the money appropriated for Title I is distributed among the States according to a weighted formula:

50.0	percent of the amount is allotted on the basis of the previous year's manpower allotment;
37.5	percent of the amount is allotted on the basis of the relative number of unemployed; and
12.5	percent of the amount is allotted on the basis of the relative number of adults in families below the low-income level.

Distribution among eligible local prime sponsors in each State is made using this same formula.

Before a prime sponsor may receive funds, it must submit a comprehensive manpower plan detailing the types of services to be provided, performance goals to be achieved, the geographical area to be served, and the extent to which community-based groups have been involved in developing the plan. The prime sponsor must make the plan public prior to submission to DOL. If an eligible prime sponsor does not submit a plan, that area may be served by the State or another eligible unit of government. If a plan is submitted but disapproved or if there is no prime sponsor for an area, DOL assumes responsibility for providing manpower services to that area directly.

State and local governments may continue programs previously authorized under MDTA and EOA but are not required to do so. Within broadly stated goals, they may explore different ways of providing employment opportunities for unemployed and underemployed persons.

Somewhat less latitude is given to State and local officials in carrying out programs funded under Title II of the act. Title II continues the Public Employment Program (PEP) previously authorized by the Emergency Employment Act of 1971. It sets aside at least $250 million for fiscal year 1974 and $350 million in fiscal 1975 to be used by State and local governments in creating public service jobs in areas of persistent high unemployment.

Eighty percent of the funds are distributed on the basis of the number of unemployed in these areas. The remaining 20 percent is distributed by discretion of the Secretary of Labor.

In order to receive funds under Title II, a State or local government must be a qualified prime sponsor for Title I funds. Indian tribes on Federal and State reservations are also eligible sponsors. The local area must have had an unemployment rate above 6.5 percent for 3 consecutive months.[118]

DOL is responsible for programs listed in Title III and Title IV. Title III covers special target groups that are particularly disadvantaged in the labor market, including persons of limited English-speaking ability, ex-felons, Indians, migrant or seasonal farmworkers, and youths. Title IV extends the life of the Job Corps.[119]

Discrimination on the ground of race, color, national origin, sex, handicap, political affiliation, and beliefs is prohibited. DOL regulations describe the way compliance with this provision will be maintained by DOL.[120] As with general revenue sharing, State and local governments are required to submit statements of assurance that they are complying with nondiscrimination laws.[121]

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[118] Under the Emergency Employment Act of 1971, the unemployment trigger was 6 percent for 3 consecutive months. 42 U.S.C. §4875(c)(1).

[119] The Job Corps is for low-income disadvantaged youths, aged 14 to 22, who "need and can benefit from an unusually intensive program, operated in a group setting, to become more responsive, employable, and productive citizens..." Comprehensive Employment and Training Act of 1973, Pub. L. 93-203 (Dec. 28, 1973) U.S. Code Cong. & Ad. News 925 (1973).

[120] See Secs. 98.21 and 98.40 to 98.49 of 39 Fed. Reg. 19917-19920 (1974). As of June 26, 1974, only regulations for Titles I and II and for Indian manpower programs and the 1974 summer youth program under Title III had been published.

In addition, complaints may be filed with DOL after a citizen exhausts administrative remedies available for the prime sponsor. To be considered a formal allegation by DOL, a complaint must be precise enough to determine against whom the complaint is made and to allow the respondent an opportunity for defense. The Assistant Regional Director for Manpower of DOL must make a prompt investigation of all formal allegations. Finally, DOL may also conduct in-depth, onsite compliance reviews of State and local governments against which no complaint has necessarily been lodged but which are suspected of practicing discrimination.

If a finding of noncompliance with civil rights laws is made, the Secretary notifies the prime sponsor and requests that it secure compliance. If this is not done within 60 days, the Secretary may terminate financial assistance and bring administrative action or recommend legal action against the prime sponsor.[122]

As DOL monitors prime sponsors, prime sponsors are also responsible for monitoring organizations they contract with to operate CETA-funded programs. The regulations suggest, as one method of enforcing civil rights compliance, that contractors and grantees be required to submit affirmative action plans to accompany the prime sponsor's comprehensive manpower plan. This, however, is left to the discretion of the prime sponsor.[123]

The regulations also provide some means of holding public officials accountable for the expenditure of manpower training funds. These include manpower planning councils, submission of reports, and publication of program summaries. Manpower planning councils are empowered to recommend program plans; analyze needs for employment, training, and related services; and monitor and evaluate manpower programs. The councils must be comprised of representatives of business, labor, educational institutions, employment services, community-based organizations, and the people being served.[124] There is no specific requirement, however, that minorities and women be fairly represented on these councils. Thus, they are not assured of a real opportunity to influence manpower programs.

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[121] The inadequacy of "paper" assurances in enforcing compliance with civil rights provisions is discussed on page 59.

[122] See Sec. 98.21 of 39 Fed. Reg. 19917 (1974).

[123] Ibid.

Three reports are required from prime sponsors. The Quarterly Progress Report, filed at the end of each fiscal quarter, summarizes the types of programs funded, the number of people served, outcomes for the participants in terms of employment or further training, and the costs incurred.[125] The Summary of Client Characteristics Report contains aggregate data on the characteristics of program participants.[126] The report of Federal Cost Transactions provides financial information on the total amount of Federal money disbursed.[127]

These reports have at least one serious drawback. Detailed information is not required on the race, ethnic background, and sex of participants according to the type of training program they are enrolled in and the type of employment in which they are subsequently placed. Thus, the reports are not helpful in determining whether minorities and women are being trained for and placed in menial jobs or in jobs that hold limited opportunity for advancement.

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124. See Sec. 95.13 of 39 Fed. Reg. 19895 (1974).

125. See Sec. 98.8 of 39 Fed. Reg. 19914 (1974).

126. Id., Sec. 98.9

127. Id., Sec. 98.10.

State and local prime sponsors are also required under Titles I and II to publish program summaries in local newspapers, including minority newspapers where feasible, at least 30 days in advance of their submission to DOL.[128] The likelihood that the summaries will be published in minority newspapers is diminished by the fact that, in ambiguous fashion, this is required only where "feasible." Moreover, publication in non-English-language or bilingual newspapers is not specifically mentioned.

The regulations fall far short of ensuring women and minorities a role in planning, monitoring, and evaluating manpower programs. Like general revenue sharing, decisionmaking authority is turned over to those governments closest to the people, but the intimate involvement of the people in governmental affairs does not necessarily extend to everyone. Minorities and women must take the initiative in gaining a voice in State- and locally-sponsored manpower programs. Knowledge of manpower laws and regulations, familiarity with manpower program plans, and representation on planning councils are the tools for achieving that goal.

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128. The 30-day requirement is waived for fiscal year 1975.

Chapter 2

Other Special Revenue Sharing Proposals

Apart from manpower revenue sharing, President Nixon also proposed special revenue sharing for community development, education, and law enforcement. Congress gave these proposals active consideration and in mid-1974 enacted measures that consolidate a number of categorical grants for education and community development. Changes made earlier in 1973 in Federal aid for law enforcement programs were not as extensive.

Community Development

In 1973 President Nixon sent Congress a proposed Better Communities Act that called for consolidation of seven community development programs and bestowed considerable discretion in the expenditure of funds upon eligible recipients. Congressional deliberations on this and other measures resulted finally in the enactment of the Housing and Community Development Act of 1974,[129] signed into law by President Ford on August 22, 1974.

Title I of this act covers community development. Effective January 1, 1975, categorical aid programs for open space land grants, urban beautification and historic preservation, public facility loans, water and sewer and neighborhood facilities grants, urban renewal and neighborhood development program grants, and Model Cities supplemental grants are to be terminated.[130] In their place the act authorizes for appropriation a total of $8.4 billion in community development block grants over a 3-year period. Annual disbursements are limited to $2.5 billion in fiscal year 1975 and $2.95 billion each in fiscal years 1976 and 1977.

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[129] Pub. L. 93-383 (Aug. 22, 1974).

[130] Rehabilitation loans will also be ended on the first anniversary of the act.

These funds are to be distributed according to a standard formula set forth in the act.[131] Eighty percent of community development block grants must go to units of government within metropolitan areas; the remaining 20 percent go to nonmetropolitan areas. Those jurisdictions within metropolitan areas that are eligible for assistance include the central city, any other city with a population of 50,000 or more, and any county that has the power to undertake community development activities and has a population of 200,000 or more (not counting that of any of the above-mentioned cities or any incorporated place that elects to be excluded). Funds distributed to nonmetropolitan areas are allocated to (a) units of government that previously participated in community development categorical aid programs, (b) otherwise ineligible localities that specifically apply for assistance, and (c) States for use in nonmetropolitan areas.

The allocation formula is based on factors of population, amount of housing overcrowding, and the extent of poverty (counted twice). Through the formula, some localities are entitled to receive more than granted under prior programs. Where there is an excess, the recipient will be "phased-in" up to its full formula level over a 3-year period. In addition, cities and counties that received higher levels of assistance under former categorical programs will continue to be funded at the higher level during the first 3 years. This larger sum is called the "hold-harmless" amount. After the third year, the "hold-harmless" provision will be phased out so that by the sixth year these governments will receive only that amount they are entitled to under the basic formula.[132]

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[131] An additional $50 million each for fiscal years 1975 and 1976 and $100 million for fiscal year 1977 are authorized for grants to communities with urgent community development needs that cannot be met through operation of the standard formula.

Recipients of community development funds may use their allocations for a host of activities. These include:

1) acquisition of property that is blighted, deteriorated, deteriorating, or otherwise appropriate for rehabilitation or conservation.

2) acquisition, construction, or installation of public works such as neighborhood facilities, senior centers, historic properties, utilities, streets, street lights, water and sewer facilities, and parks, playgrounds, or other recreational facilities. Funds may also be used for flood and drainage facilities when assistance is unavailable under other Federal programs. In addition, parking and solid waste disposal facilities and fire protection services and facilities are eligible for assistance if they are located in or serving designated community development areas.

3) code enforcement in deteriorated or deteriorating areas.

4) clearance, demolition, removal, and rehabilitation of buildings.

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132. Small communities that have been participating in Model Cities, urban renewal, or code enforcement will receive the same "hold-harmless" treatment even though they are entitled to nothing under the formula. In addition, the act prescribes that of the $8.4 billion authorized for formula-based allocations, $50 million each for fiscal years 1975 and 1976 shall be set aside for distribution to communities in metropolitan areas that have no formula entitlement and have not been participating in urban renewal, Model Cities, or code enforcement programs. Funds will be allocated to these jurisdictions according to population, amount of housing overcrowding, and extent of poverty (counted twice). The act permits the Secretary of Housing and Urban Development to set aside another 2 percent of the funds for discretionary grants for new communities, areawide community development programs, disaster aid, correction of inequities resulting from the regular allocation provisions, and U.S. territories and the Trust Territory of the Pacific Islands.

5) relocation payments for those displaced by community development activities.

6) payments to housing owners for losses in rental income while temporarily holding units to be used for relocation.

7) provision of public services not otherwise available in areas of concentrated development activities. These may include services that meet employment, economic development, crime prevention, child care, health, drug abuse, education, welfare, or recreation needs.

8) preparation of a comprehensive community development plan and improvement in policy-planning-management capacity.

In order actually to receive their allocations, eligible recipients must file an annual application with the Department of Housing and Urban Development (HUD), which is responsible for administration of this program. The application must contain a summary of a 3-year plan that identifies community development needs and objectives and conforms with areawide development plans. The applicant also must describe a program to eliminate or prevent slums, blight, and deterioration where such conditions exist and to provide community facilities and public improvements where necessary.

Finally, the application must incorporate a housing assistance plan that assesses the housing needs of low-income persons residing in or expected to move into the community, specifies an annual goal for the number of units or persons to be assisted, and indicates the location of proposed low-income housing with a view to promoting greater housing choice and avoiding undue concentration of low-income people in certain neighborhoods.[133]

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133. Under limited circumstances, HUD can waive all application requirements except those pertaining to housing assistance when the locality has a population of less than 25,000.

The Department of Housing and Urban Development has the authority to approve applications and to review the actual performance of recipient governments. The act, however, places considerable constraints on this authority. As a result Federal control over expenditures falls somewhere between the completely free spending hand contemplated in special revenue sharing and the substantially greater influence HUD exercised previously under categorical programs. Applications from metropolitan cities and counties are automatically deemed approved 75 days after their submission unless HUD notifies the jurisdictions to the contrary. HUD also is required to approve applications unless the statement of community development needs is plainly inconsistent with available information, the activities proposed are clearly inappropriate in meeting the community's needs or are not eligible for assistance under the act, or the application does not conform with the law in some other way.

HUD's powers to review the performance of approved applicants and to adjust assistance levels accordingly is similarly limited. It may intervene only if the program carried out was substantially different from that described in the application, if the recipient cannot execute its program in timely fashion, or if the program did not conform to legal requirements.

One provision with which recipient governments are expected to comply is that prohibiting discrimination on the basis of race, color, national origin, or sex. When discrimination is found, HUD must notify the chief elected official of the locality and give that official 60 days to correct the violation. Failing this, HUD may take action to terminate, reduce, or limit the availability of grant payments. Alternatively, HUD may refer the matter to the U.S. Attorney General for legal action. Suits brought by the Attorney General may call for recovery of amounts spent in violation of nondiscrimination requirements.

Education

In 1973, President Nixon also proposed a Better Schools Act calling for the consolidation of about 30 educational programs into special revenue sharing. Programs to be consolidated included education for the disadvantaged, education for the handicapped, vocational education, adult education, "impact" aid for children residing on Federal property and attending public school, and certain support services. At the same time, termination of funding was proposed for Titles II and V of the Elementary and Secondary Education Act (ESEA), Title III of the National Defense Education Act (NDEA), Part B-2 of the Education Professions Development Act (EPDA), and aid to schools with students whose parents work for the Federal Government but do not live on Federal property.[134]

The Better Schools Act met with little favor in Congress. Nearly all school districts would have lost money, since some programs were being terminated without continued comparable funding under special revenue sharing. Some districts would have lost even more because of changes in distribution formulas, particularly the one allocating aid for disadvantaged children (ESEA Title I).

In 1974 the Nixon administration substantially modified its proposal, recommending consolidation of categorical aid programs rather than revenue sharing. The result of this consolidation would have been five grant programs: education for the handicapped, support services, innovation, vocational education, and adult education. In partial response to this latest proposal, Congress passed a bill that consolidated programs for support services and innovation and simplified the grant application process.[135]

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[134] ESEA Title II (20 U.S.C. §821-827) funds are used for the purpose of school library resources, textbooks, and other instructional materials. ESEA Title V (20 U.S.C. §861-869a) provides funds for strengthening State and local education agencies. NDEA Title III (20 U.S.C. §441-455) provides financial assistance for strengthening instruction in certain critical subjects, including mathematics and science. EPDA Part B-2 (20 U.S.C. §1108-1110c) provides funds for attracting and qualifying teachers to meet critical teacher shortages.

Law Enforcement

In 1973 President Nixon also proposed to replace block grants allocated by the Law Enforcement Assistance Administration (LEAA) under the Omnibus Crime Control and Safe Streets Act of 1968.[136] This law enforcement revenue sharing proposal would have abolished matching fund requirements and eliminated the necessity for program plans to be approved before recipients are given funds. Congress chose instead to extend the life of LEAA's block grants under the Crime Control Act of 1973.[137] Some restrictions were loosened, and matching fund requirements were reduced. Nevertheless, limitations were not relaxed to the extent envisioned in the administration's proposal.

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These special revenue sharing proposals were part of President Nixon's effort to reform the Federal grant system. Whether reform comes in the form of special revenue sharing or merely grant consolidation, the intent is to maximize State and local responsibility for planning and management, to consolidate overlapping Federal grant programs, and to simplify Federal grant administrative requirements. The purpose is to allow each level of government to focus attention on the functions best performed at its level. In achieving this purpose, however, the Federal Government cannot forget that one of its functions is the protection of civil rights. Equal opportunity for minorities and women cannot be sacrificed for the sake of establishing a new balance of power between governments.

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[135] Pub. L. 93-380 (Aug. 21, 1974).

[136] 42 U.S.C. §3701 *et seq*.

[137] Pub. L. 93-83 (Aug. 6, 1973) *U.S. Code Cong. & Ad. News* 228 (1973).

SUMMARY

Revenue sharing in all its forms is part of an effort to shift decisionmaking responsibilities from the Federal to State and local governments. It is based on the premise that governments closest to the people are the most responsive to the needs of the people.

Many people concerned with the rights of minorities and women question this premise. Many State and local governments historically have denied minorities and women equal opportunity in public programs and have passed laws infringing upon their rights. Consequently, revenue sharing is viewed by many civil rights advocates as symptomatic of a declining Federal commitment to the principles of equal opportunity.

General Revenue Sharing

General revenue sharing, the first revenue sharing measure to be enacted, provides new Federal funding that may be spent at the almost complete discretion of State and local officials. Signed into law on October 20, 1972, the Revenue Sharing Act[138] authorizes more than $30 billion to be paid to States and localities during the 5 years 1972 to 1976.

The act prohibits discrimination on the bases of race, color, national origin, and sex. The Office of Revenue Sharing (ORS) in the Department of the Treasury is responsible for maintaining compliance with this law and taking appropriate legal action when a recipient is found in violation of nondiscrimination provisions. ORS, however, has been complacent in living up to this civil rights mandate. Only 4 staff people are engaged full-time in civil rights compliance activities. Although experience with other federally-assisted programs indicates that a system of periodic compliance reviews is essential if nondiscrimination provisions are to be adequately enforced, ORS has yet to organize such an effort. To date, it has confined its civil rights activities almost solely to processing complaints. Since complaints are frequently not filed owing to fear of reprisal and unfamiliarity with the law and complaint procedures, among other reasons, this is a rather weak approach to civil rights enforcement.

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[138] 31 U.S.C. §1221 et seq.

Even if the Office of Revenue Sharing were to improve its enforcement program, still other circumstances militate against the interests of minorities and women. The law lists a number of "priority areas" in which revenue sharing money may be spent. These are so inclusive that almost any expenditure may be justified. Within this broad range of choices, projects to which minorities, women, and other special interest groups attach greatest priority may not be funded. Nondiscrimination provisions do not require that minorities and women be afforded an equal voice in spending decisions.

Initiatives to discourage irresponsible or unpopular actions on the part of local officials must come primarily from local residents. As Graham Watt, Director of ORS, has acknowledged:

> The whole idea is that the mayors, the county councils and the governors ought to be accountable for the use of /revenue sharing/ funds to their constituency and not to the bureaucracy in Washington.[139]

Several Federal categorical aid programs have stringent community participation requirements. With revenue sharing, however, citizens must exercise the initiative in seeking a truly influential role in the decisionmaking process. Planned and actual use reports required by ORS serve little useful purpose. They do not ask for information on the race, ethnic background, and sex of beneficiaries of programs or activities funded with revenue sharing money. Moreover, expenditures are reported according to broad functional categories, obscuring the specific purposes for which the money is being spent. For example, when the contents of the reports are published in the local newspaper in accordance with the law, citizens are not told that general revenue sharing money is being spent to purchase new fire engines or launch police recruitment programs for minorities and women, but rather that it is being spent generally for public safety.

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[139] John Wilpers, "Revenue Sharer Watt: The Administrator of a Dream," Government Executive, Vol. 5, March 1973, p. 22.

In many localities, public opinion has been solicited on proposed general revenue sharing expenditures at regularly scheduled or special hearings. However, public hearings typically come at the end of the budget cycle after the budget is in nearly final form. They do not provide any real opportunity for citizens to participate in the day-to-day formulation of plans and policies that are later translated into dollars and cents.

Because general revenue sharing gives State and local officials the responsibility for making spending decisions, the need for citizens to understand the budget process is vital. Effective involvement in this process can be achieved only if the public extends its interest to all the functions and activities of government. Despite Federal auditing and accounting requirements, once general revenue sharing funds are transferred to recipient governments, they lose most of their identity as Federal money. In essence, they become part of the local treasury.

Special Revenue Sharing

Public vigilance is also important under special revenue sharing. Several categorical grant programs are consolidated into one program and, as with general revenue sharing, greater decisionmaking authority is shifted to State and local officials. Of four proposals for special revenue sharing in the areas of manpower, community development, education, and law enforcement, the first to become law is manpower revenue sharing. Signed by President Nixon on December 28, 1973, the Comprehensive Employment and Training Act (CETA)[140] names

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[140] Pub. L. 93-203 (Dec. 28, 1973) U.S. Code Cong. & Ad. News 925 (1973).

State and local governments as prime sponsors of manpower programs.

Discrimination on the grounds of race, color, national origin, sex, handicap, political affiliation, and beliefs is prohibited. The Department of Labor (DOL), the administering Federal agency, is responsible for enforcing civil rights compliance of State and local governments. In turn, States and localities must monitor contractors and grantees that operate their manpower programs. The exact nature of State and local compliance efforts, however, is left to the discretion of the prime sponsors.

Some Federal control over expenditures is exercised by requiring prime sponsors to submit program plans to DOL before receiving funds. To assist it in planning and evaluation, each State and local government must form a manpower planning council comprised of representatives of business, labor, education institutions, employment services, community-based organizations, and program participants. Minorities and women are not specifically required to be represented on these councils.

Prime sponsors are also expected to furnish DOL with periodic reports on the types of programs funded, the characteristics of program participants, their outcomes in terms of employment and further training, and costs incurred. These reports, however, do not provide adequate information to determine whether minorities and women are trained for and placed in jobs comparable to those of other participants. Thus, discrimination may go undetected.

* * * *

Revenue sharing compels minorities and women to turn their attention to State and local governments. State and local officials--not Federal bureaucrats--are primarily responsible for setting spending priorities for this new form of Federal aid. Decisionmaking is returned to the government closest to the people, but the responsiveness of State and local officials depends largely on the initiative of those they are supposed to serve. Revenue sharing will benefit minorities and women only to the extent that they are able to play a constant and intimate role in making policy and operating public programs at the State and local level.

APPENDIX A

Public Law 92-512
92nd Congress, H. R. 14370
October 20, 1972

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An Act

86 STAT. 919

To provide fiscal assistance to State and local governments, to authorize Federal collection of State individual income taxes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Federal-State revenue sharing.

TITLE I—FISCAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Subtitle A—Allocation and Payment of Funds

SEC. 101. SHORT TITLE.

This title may be cited as the "State and Local Fiscal Assistance Act of 1972".

Citation of title.

SEC. 102. PAYMENTS TO STATE AND LOCAL GOVERNMENTS.

Except as otherwise provided in this title, the Secretary shall, for each entitlement period, pay out of the Trust Fund to—

(1) each State government a total amount equal to the entitlement of such State government determined under section 107 for such period, and

(2) each unit of local government a total amount equal to the entitlement of such unit determined under section 108 for such period.

In the case of entitlement periods ending after the date of the enactment of this Act, such payments shall be made in installments, but not less often than once for each quarter, and, in the case of quarters ending after September 30, 1972, shall be paid not later than 5 days after the close of each quarter. Such payments for any entitlement period may be initially made on the basis of estimates. Proper adjustment shall be made in the amount of any payment to a State government or a unit of local government to the extent that the payments previously made to such government under this subtitle were in excess of or less than the amounts required to be paid.

SEC. 103. USE OF FUNDS BY LOCAL GOVERNMENTS FOR PRIORITY EXPENDITURES.

(a) In General.—Funds received by units of local government under this subtitle may be used only for priority expenditures. For purposes of this title, the term "priority expenditures" means only—

"Priority expenditures."

(1) ordinary and necessary maintenance and operating expenses for—

(A) public safety (including law enforcement, fire protection, and building code enforcement),

(B) environmental protection (including sewage disposal, sanitation, and pollution abatement),

(C) public transportation (including transit systems and streets and roads),

(D) health,

(E) recreation,

(F) libraries,

(G) social services for the poor or aged, and

(H) financial administration; and

(2) ordinary and necessary capital expenditures authorized by law.

(b) Certificates by Local Governments.—The Secretary is authorized to accept a certification by the chief executive officer of a unit of local government that the unit of local government has used

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the funds received by it under this subtitle for an entitlement period only for priority expenditures, unless he determines that such certification is not sufficiently reliable to enable him to carry out his duties under this title.

SEC. 104. PROHIBITION ON USE AS MATCHING FUNDS BY STATE OR LOCAL GOVERNMENTS.

(a) In General.—No State government or unit of local government may use, directly or indirectly, any part of the funds it receives under this subtitle as a contribution for the purpose of obtaining Federal funds under any law of the United States which requires such government to make a contribution in order to receive Federal funds.

(b) Determinations by Secretary of the Treasury.—If the Secretary has reason to believe that a State government or unit of local government has used funds received under this subtitle in violation of subsection (a), he shall give reasonable notice and opportunity for hearing to such government. If, thereafter, the Secretary of the Treasury determines that such government has used funds in violation of subsection (a), he shall notify such government of his determination and shall request repayment to the United States of an amount equal to the funds so used. To the extent that such government fails to repay such amount, the Secretary shall withhold from subsequent payments to such government under this subtitle an amount equal to the funds so used.

(c) Increased State or Local Government Revenues.—No State government or unit of local government shall be determined to have used funds in violation of subsection (a) with respect to any funds received for any entitlement period to the extent that the net revenues received by it from its own sources during such period exceed the net revenues received by it from its own sources during the one-year period beginning July 1, 1971 (or one-half of such net revenues, in the case of an entitlement period of 6 months).

(d) Deposits and Transfers to General Fund.—Any amount repaid by a State government or unit of local government under subsection (b) shall be deposited in the general fund of the Treasury. An amount equal to the reduction in payments to any State government or unit of local government which results from the application of this section (after any judicial review under section 143) shall be transferred from the Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

Post, p. 935.

(e) Certificates by State and Local Governments.—The Secretary is authorized to accept a certification by the Governor of a State or the chief executive officer of a unit of local government that the State government or unit of local government has not used any funds received by it under this subtitle for an entitlement period in violation of subsection (a), unless he determines that such certification is not sufficiently reliable to enable him to carry out his duties under this title.

SEC. 105. CREATION OF TRUST FUND; APPROPRIATIONS.

(a) Trust Fund.—

(1) In general.—There is hereby established on the books of the Treasury of the United States a trust fund to be known as the "State and Local Government Fiscal Assistance Trust Fund" (referred to in this subtitle as the "Trust Fund"). The Trust Fund shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it and deposited in it as provided in subsection (b). Except as provided in this title,

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amounts in the Trust Fund may be used only for the payments to State and local governments provided by this subtitle.

(2) Trustee.—The Secretary of the Treasury shall be the trustee of the Trust Fund and shall report to the Congress not later than March 1 of each year on the operation and status of the Trust Fund during the preceding fiscal year.

Report to Congress.

(b) Appropriations.—

(1) In general.—There is appropriated to the Trust Fund, out of amounts in the general fund of the Treasury attributable to the collections of the Federal individual income taxes not otherwise appropriated—

(A) for the period beginning January 1, 1972, and ending June 30, 1972, $2,650,000,000;

(B) for the period beginning July 1, 1972, and ending December 31, 1972, $2,650,000,000;

(C) for the period beginning January 1, 1973, and ending June 30, 1973, $2,987,500,000;

(D) for the fiscal year beginning July 1, 1973, $6,050,000,000;

(E) for the fiscal year beginning July 1, 1974, $6,200,000,000;

(F) for the fiscal year beginning July 1, 1975, $6,350,000,000; and

(G) for the period beginning July 1, 1976, and ending December 31, 1976, $3,325,000,000.

(2) Noncontiguous States adjustment amounts.—There is appropriated to the Trust Fund, out of amounts in the general fund of the Treasury attributable to the collections of the Federal individual income taxes not otherwise appropriated—

(A) for the period beginning January 1, 1972, and ending June 30, 1972, $2,390,000;

(B) for the period beginning July 1, 1972, and ending December 31, 1972, $2,390,000;

(C) for the period beginning January 1, 1973, and ending June 30, 1973, $2,390,000;

(D) for each of the fiscal years beginning July 1, 1973, July 1, 1974, and July 1, 1975, $4,780,000; and

(E) for the period beginning July 1, 1976, and ending December 31, 1976, $2,390,000.

(3) Deposits.—Amounts appropriated by paragraph (1) or (2) for any fiscal year or other period shall be deposited in the Trust Fund on the later of (A) the first day of such year or period, or (B) the day after the date of enactment of this Act.

(c) Transfers From Trust Fund to General Fund.—The Secretary shall from time to time transfer from the Trust Fund to the general fund of the Treasury any moneys in the Trust Fund which he determines will not be needed to make payments to State governments and units of local government under this subtitle.

SEC. 106. ALLOCATION AMONG STATES.

(a) In General.—There shall be allocated to each State for each entitlement period, out of amounts appropriated under section 105(b)(1) for that entitlement period, an amount which bears the same ratio to the amount appropriated under that section for that period as the amount allocable to that State under subsection (b) bears to the sum of the amounts allocable to all States under subsection (b).

(b) Determination of Allocable Amount.—

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(1) IN GENERAL.—For purposes of subsection (a), the amount allocable to a State under this subsection for any entitlement period shall be determined under paragraph (2), except that such amount shall be determined under paragraph (3) if the amount allocable to it under paragraph (3) is greater than the sum of the amounts allocable to it under paragraph (2) and subsection (c).

(2) THREE FACTOR FORMULA.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount which bears the same ratio to $5,300,000,000 as—

(A) the population of that State, multiplied by the general tax effort factor of that State, multiplied by the relative income factor of that State, bears to

(B) the sum of the products determined under subparagraph (A) for all States.

(3) FIVE FACTOR FORMULA.—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount to which that State would be entitled if—

(A) ⅓ of $3,500,000,000 were allocated among the States on the basis of population,

(B) ⅓ of $3,500,000,000 were allocated among the States on the basis of urbanized population,

(C) ⅓ of $3,500,000,000 were allocated among the States on the basis of population inversely weighted for per capita income,

(D) ½ of $1,800,000,000 were allocated among the States on the basis of income tax collections, and

(E) ½ of $1,800,000,000 were allocated among the States on the basis of general tax effort.

(c) NONCONTIGUOUS STATES ADJUSTMENT.—

(1) IN GENERAL.—In addition to amounts allocated among the States under subsection (a), there shall be allocated for each entitlement period, out of amounts appropriated under section 105(b)(2), an additional amount to any State (A) whose allocation under subsection (b) is determined by the formula set forth in paragraph (2) of that subsection and (B) in which civilian employees of the United States Government receive an allowance under section 5941 of title 5, United States Code. 80 Stat. 512.

(2) DETERMINATION OF AMOUNT.—The additional amount allocable to any State under this subsection for any entitlement period is an amount equal to a percentage of the amount allocable to that State under subsection (b)(2) for that period which is the same as the percentage of basic pay received by such employees stationed in that State as an allowance under such section 5941. If the total amount appropriated under section 105(b)(2) for any entitlement period is not sufficient to pay in full the additional amounts allocable under this subsection for that period, the Secretary shall reduce proportionately the amounts so allocable.

SEC. 107. ENTITLEMENTS OF STATE GOVERNMENTS.

(a) DIVISION BETWEEN STATE AND LOCAL GOVERNMENTS.—The State government shall be entitled to receive one-third of the amount allocated to that State for each entitlement period. The remaining portion of each State's allocation shall be allocated among the units of local government of that State as provided in section 108.

(b) STATE MUST MAINTAIN TRANSFERS TO LOCAL GOVERNMENTS.—

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(1) GENERAL RULE.—The entitlement of any State government for any entitlement period beginning on or after July 1, 1973, shall be reduced by the amount (if any) by which—

(A) the average of the aggregate amounts transferred by the State government (out of its own sources) during such period and the preceding entitlement period to all units of local government in such State, is less than

(B) the similar aggregate amount for the one-year period beginning July 1, 1971.

For purposes of subparagraph (A), the amount of any reduction in the entitlement of a State government under this subsection for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State government (out of its own sources) during such period to units of local government in such State.

(2) ADJUSTMENT WHERE STATE ASSUMES RESPONSIBILITY FOR CATEGORY OF EXPENDITURES.—If the State government establishes to the satisfaction of the Secretary that since June 30, 1972, it has assumed responsibility for a category of expenditures which (before July 1, 1972) was the responsibility of local governments located in such State, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(B) shall be reduced to the extent that increased State government spending (out of its own sources) for such category has replaced corresponding amounts which for the one-year period beginning July 1, 1971, it transferred to units of local government.

(3) ADJUSTMENT WHERE NEW TAXING POWERS ARE CONFERRED UPON LOCAL GOVERNMENTS.—If a State establishes to the satisfaction of the Secretary that since June 30, 1972, one or more units of local government within such State have had conferred upon them new taxing authority, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(B) shall be reduced to the extent of the larger of—

(A) an amount equal to the amount of the taxes collected by reason of the exercise of such new taxing authority by such local governments, or

(B) an amount equal to the amount of the loss of revenue to the State by reason of such new taxing authority being conferred on such local governments.

No amount shall be taken into consideration under subparagraph (A) if such new taxing authority is an increase in the authorized rate of tax under a previously authorized kind of tax, unless the State is determined by the Secretary to have decreased a related State tax.

(4) SPECIAL RULE FOR PERIOD BEGINNING JULY 1, 1973.—In the case of the entitlement period beginning July 1, 1973, the preceding entitlement period for purposes of paragraph (1)(A) shall be treated as being the one-year period beginning July 1, 1972.

(5) SPECIAL RULE FOR PERIOD BEGINNING JULY 1, 1976.—In the case of the entitlement period beginning July 1, 1976, and ending December 31, 1976, the aggregate amount taken into account under paragraph (1)(A) for the preceding entitlement period and the aggregate amount taken into account under paragraph (1)(B) shall be one-half of the amounts which (but for this paragraph) would be taken into account.

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(6) REDUCTION IN ENTITLEMENT.—If the Secretary has reason to believe that paragraph (1) requires a reduction in the entitlement of any State government for any entitlement period, he shall give reasonable notice and opportunity for hearing to the State. If, thereafter, he determines that paragraph (1) requires the reduction of such entitlement, he shall also determine the amount of such reduction and shall notify the Governor of such State of such determinations and shall withhold from subsequent payments to such State government under this subtitle an amount equal to such reduction.

(7) TRANSFER TO GENERAL FUND.—An amount equal to the reduction in the entitlement of any State government which results from the application of this subsection (after any judicial review under section 143) shall be transferred from the Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

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SEC. 108. ENTITLEMENTS OF LOCAL GOVERNMENTS.

(a) ALLOCATION AMONG COUNTY AREAS.—The amount to be allocated to the units of local government within a State for any entitlement period shall be allocated among the county areas located in that State so that each county area will receive an amount which bears the same ratio to the total amount to be allocated to the units of local government within that State as—

(1) the population of that county area, multiplied by the general tax effort factor of that county area, multiplied by the relative income factor of that county area, bears to

(2) the sum of the products determined under paragraph (1) for all county areas within that State.

(b) ALLOCATION TO COUNTY GOVERNMENTS, MUNICIPALITIES, TOWNSHIPS, ETC.—

(1) COUNTY GOVERNMENTS.—The county government shall be allocated that portion of the amount allocated to the county area for the entitlement period under subsection (a) which bears the same ratio to such amount as the adjusted taxes of the county government bear to the adjusted taxes of the county government and all other units of local government located in the county area.

(2) OTHER UNITS OF LOCAL GOVERNMENT.—The amount remaining for allocation within a county area after the application of paragraph (1) shall be allocated among the units of local government (other than the county government and other than township governments) located in that county area so that each unit of local government will receive an amount which bears the same ratio to the total amount to be allocated to all such units as—

(A) the population of that local government, multiplied by the general tax effort factor of that local government, multiplied by the relative income factor of that local government, bears to

(B) the sum of the products determined under subparagraph (A) for all such units.

(3) TOWNSHIP GOVERNMENTS.—If the county area includes one or more township governments, then before applying paragraph (2)—

(A) there shall be set aside for allocation under subparagraph (B) to such township governments that portion of the amount allocated to the county area for the entitlement period which bears the same ratio to such amount as the sum

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of the adjusted taxes of all such township governments bears to the aggregate adjusted taxes of the county government, such township governments, and all other units of local government located in the county area, and

(B) that portion of each amount set aside under subparagraph (A) shall be allocated to each township government on the same basis as amounts are allocated to units of local government under paragraph (2).

If this paragraph applies with respect to any county area for any entitlement period, the remaining portion allocated under paragraph (2) to the units of local government located in the county area (other than the county government and the township governments) shall be appropriately reduced to reflect the amounts set aside under subparagraph (A).

(4) Indian tribes and Alaskan native villages.—If within a county area there is an Indian tribe or Alaskan native village which has a recognized governing body which performs substantial governmental functions, then before applying paragraph (1) there shall be allocated to such tribe or village a portion of the amount allocated to the county area for the entitlement period which bears the same ratio to such amount as the population of that tribe or village within that county area bears to the population of that county area. If this paragraph applies with respect to any county area for any entitlement period, the amount to be allocated under paragraph (1) shall be appropriately reduced to reflect the amount allocated under the preceding sentence. If the entitlement of any such tribe or village is waived for any entitlement period by the governing body of that tribe or village, then the provisions of this paragraph shall not apply with respect to the amount of such entitlement for such period.

(5) Rule for small units of government.—If the Secretary determines that in any county area the data available for any entitlement period are not adequate for the application of the formulas set forth in paragraphs (2) and (3)(B) with respect to units of local government (other than a county government) with a population below a number (not more than 500) prescribed for that county area by the Secretary, he may apply paragraph (2) or (3)(B) by allocating for such entitlement period to each such unit located in that county area an amount which bears the same ratio to the total amount to be allocated under paragraph (2) or (3)(B) for such entitlement period as the population of such unit bears to the population of all units of local government in that county area to which allocations are made under such paragraph. If the preceding sentence applies with respect to any county area, the total amount to be allocated under paragraph (2) or (3)(B) to other units of local government in that county area for the entitlement period shall be appropriately reduced to reflect the amounts allocated under the preceding sentence.

(6) Entitlement.—

(A) In general.—Except as otherwise provided in this paragraph, the entitlement of any unit of local government for any entitlement period shall be the amount allocated to such unit under this subsection (after taking into account any applicable modification under subsection (c)).

(B) Maximum and minimum per capita entitlement.—Subject to the provisions of subparagraphs (C) and (D), the per capita amount allocated to any county area or any unit of local government (other than a county government) within a

State under this section for any entitlement period shall not be less than 20 percent, nor more than 145 percent, of two-thirds of the amount allocated to the State under section 106, divided by the population of that State.

(C) Limitation.—The amount allocated to any unit of local government under this section for any entitlement period shall not exceed 50 percent of the sum of (i) such government's adjusted taxes, and (ii) the intergovernmental transfers of revenue to such government (other than transfers to such government under this subtitle).

(D) Entitlement less than $200, or governing body waives entitlement.—If (but for this subparagraph) the entitlement of any unit of local government below the level of the county government—

(i) would be less than $200 for any entitlement period ($100 for an entitlement period of 6 months), or

(ii) is waived for any entitlement period by the governing body of such unit,

then the amount of such entitlement for such period shall (in lieu of being paid to such unit) be added to, and shall become a part of, the entitlement for such period of the county government of the county area in which such unit is located.

(7) Adjustment of entitlement.—

(A) In general.—In adjusting the allocation of any county area or unit of local government, the Secretary shall make any adjustment required under paragraph (6) (B) first, any adjustment required under paragraph (6)(C) next, and any adjustment required under paragraph (6)(D) last.

(B) Adjustment for application of maximum or minimum per capita entitlement.—The Secretary shall adjust the allocations made under this section to county areas or to units of local governments in any State in order to bring those allocations into compliance with the provisions of paragraph (6)(B). In making such adjustments he shall make any necessary adjustments with respect to county areas before making any necessary adjustments with respect to units of local government.

(C) Adjustment for application of limitation.—In any case in which the amount allocated to a unit of local government is reduced under paragraph (6)(C) by the Secretary, the amount of that reduction—

(i) in the case of a unit of local government (other than a county government), shall be added to and increase the allocation of the county government of the county area in which it is located, unless (on account of the application of paragraph (6)) that county government may not receive it, in which case the amount of the reduction shall be added to and increase the entitlement of the State government of the State in which that unit of local government is located; and

(ii) in the case of a county government, shall be added to and increase the entitlement of the State government of the State in which it is located.

(c) Special Allocation Rules.—

(1) Optional formula.—A State may by law provide for the allocation of funds among county areas, or among units of local government (other than county governments), on the basis of the population multiplied by the general tax effort factors of such areas or units of local government, on the basis of the population

multiplied by the relative income factors of such areas or units of local government, or on the basis of a combination of those two factors. Any State which provides by law for such a variation in the allocation formula provided by subsection (a), or by paragraphs (2) and (3) of subsection (b), shall notify the Secretary of such law not later than 30 days before the beginning of the first entitlement period to which such law is to apply. Any such law shall—

(A) provide for allocating 100 percent of the aggregate amount to be allocated under subsection (a), or under paragraphs (2) and (3) of subsection (b);

(B) apply uniformly throughout the State; and

(C) apply during the period beginning on the first day of the first entitlement period to which it applies and ending on December 31, 1976.

(2) Certification.—Paragraph (1) shall apply within a State only if the Secretary certifies that the State law complies with the requirements of such paragraph. The Secretary shall not certify any such law with respect to which he receives notification later than 30 days prior to the first entitlement period during which it is to apply.

(d) Governmental Definitions and Related Rules.—For purposes of this title—

(1) Units of local government.—The term "unit of local government" means the government of a county, municipality, township, or other unit of government below the State which is a unit of general government (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes). Such term also means, except for purposes of paragraphs (1), (2), (3), (5), (6)(C), and (6)(D) of subsection (b), and, except for purposes of subsection (c), the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions.

(2) Certain areas treated as counties.—In any State in which any unit of local government (other than a county government) constitutes the next level of government below the State government level, then, except as provided in the next sentence, the geographic area of such unit of government shall be treated as a county area (and such unit of government shall be treated as a county government) with respect to that portion of the State's geographic area. In any State in which any county area is not governed by a county government but contains two or more units of local government, such units shall not be treated as county governments and the geographic areas of such units shall not be treated as county areas.

(3) Townships.—The term "township" includes equivalent subdivisions of government having different designations (such as "towns"), and shall be determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes.

(4) Units of local government located in larger entity.—A unit of local government shall be treated as located in a larger entity if part or all of its geographic area is located in the larger entity.

(5) Only part of unit located in larger entity.—If only part of a unit of local government is located in a larger entity, such part shall be treated for allocation purposes as a separate unit of

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local government, and all computations shall, except as otherwise provided in regulations, be made on the basis of the ratio which the estimated population of such part bears to the population of the entirety of such unit.

(6) BOUNDARY CHANGES, GOVERNMENTAL REORGANIZATION, ETC.—If, by reason of boundary line changes, by reason of State statutory or constitutional changes, by reason of annexations or other governmental reorganizations, or by reason of other circumstances, the application of any provision of this section to units of local government does not carry out the purposes of this subtitle, the application of such provision shall be made, under regulations prescribed by the Secretary, in a manner which is consistent with such purposes.

SEC. 109. DEFINITIONS AND SPECIAL RULES FOR APPLICATION OF ALLOCATION FORMULAS.

(a) IN GENERAL.—For purposes of this subtitle—

(1) POPULATION.—Population shall be determined on the same basis as resident population is determined by the Bureau of the Census for general statistical purposes.

(2) URBANIZED POPULATION.—Urbanized population means the population of any area consisting of a central city or cities of 50,000 or more inhabitants (and of the surrounding closely settled territory for such city or cities) which is treated as an urbanized area by the Bureau of the Census for general statistical purposes.

(3) INCOME.—Income means total money income received from all sources, as determined by the Bureau of the Census for general statistical purposes.

(4) PERSONAL INCOME.—Personal income means the income of individuals, as determined by the Department of Commerce for national income accounts purposes.

(5) DATES FOR DETERMINING ALLOCATIONS AND ENTITLEMENTS.—Except as provided in regulations, the determination of allocations and entitlements for any entitlement period shall be made as of the first day of the third month immediately preceding the beginning of such period.

(6) INTERGOVERNMENTAL TRANSFERS.—The intergovernmental transfers of revenue to any government are the amounts of revenue received by that government from other governments as a share in financing (or as reimbursement for) the performance of governmental functions, as determined by the Bureau of the Census for general statistical purposes.

(7) DATA USED; UNIFORMITY OF DATA.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), the data used shall be the most recently available data provided by the Bureau of the Census or the Department of Commerce, as the case may be.

(B) USE OF ESTIMATES, ETC.—Where the Secretary determines that the data referred to in subparagraph (A) are not current enough or are not comprehensive enough to provide for equitable allocations, he may use such additional data (including data based on estimates) as may be provided for in regulations.

(b) INCOME TAX AMOUNT OF STATES.—For purposes of this subtitle—

(1) IN GENERAL.—The income tax amount of any State for any entitlement period is the income tax amount of such State as determined under paragraphs (2) and (3).

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(2) INCOME TAX AMOUNT.—The income tax amount of any State for any entitlement period is 15 percent of the net amount collected from the State individual income tax of such State during 1972 or (if later) during the last calendar year ending before the beginning of such entitlement period.

(3) CEILING AND FLOOR.—The income tax amount of any State for any entitlement period—

(A) shall not exceed 6 percent, and

(B) shall not be less than 1 percent,

of the Federal individual income tax liabilities attributed to such State for taxable years ending during 1971 or (if later) during the last calendar year ending before the beginning of such entitlement period.

(4) STATE INDIVIDUAL INCOME TAX.—The individual income tax of any State is the tax imposed upon the income of individuals by such State and described as a State income tax under section 164(a)(3) of the Internal Revenue Code of 1954.

78 Stat. 40.
26 USC 164.

(5) FEDERAL INDIVIDUAL INCOME TAX LIABILITIES.—Federal individual income tax liabilities attributed to any State for any period shall be determined on the same basis as such liabilities are determined for such period by the Internal Revenue Service for general statistical purposes.

(c) GENERAL TAX EFFORT OF STATES.—

(1) IN GENERAL.—For purposes of this subtitle—

(A) GENERAL TAX EFFORT FACTOR.—The general tax effort factor of any State for any entitlement period is (i) the net amount collected from the State and local taxes of such State during the most recent reporting year, divided by (ii) the aggregate personal income (as defined in paragraph (4) of subsection (a)) attributed to such State for the same period.

(B) GENERAL TAX EFFORT AMOUNT.—The general tax effort amount of any State for any entitlement period is the amount determined by multiplying—

(i) the net amount collected from the State and local taxes of such State during the most recent reporting year, by

(ii) the general tax effort factor of that State.

(2) STATE AND LOCAL TAXES.—

(A) TAXES TAKEN INTO ACCOUNT.—The State and local taxes taken into account under paragraph (1) are the compulsory contributions exacted by the State (or by any unit of local government or other political subdivision of the State) for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems, and other than special assessments for capital outlay), as such contributions are determined by the Bureau of the Census for general statistical purposes.

(B) MOST RECENT REPORTING YEAR.—The most recent reporting year with respect to any entitlement period consists of the years taken into account by the Bureau of the Census in its most recent general determination of State and local taxes made before the close of such period.

(d) GENERAL TAX EFFORT FACTOR OF COUNTY AREA.—For purposes of this subtitle, the general tax effort factor of any county area for any entitlement period is—

(1) the adjusted taxes of the county government plus the ad-

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justed taxes of each other unit of local government within that county area, divided by

(2) the aggregate income (as defined in paragraph (3) of subsection (a)) attributed to that county area.

(e) General Tax Effort Factor of Unit of Local Government.—For purposes of this subtitle—

(1) In general.—The general tax effort factor of any unit of local government for any entitlement period is—

(A) the adjusted taxes of that unit of local government, divided by

(B) the aggregate income (as defined in paragraph (3) of subsection (a)) attributed to that unit of local government.

(2) Adjusted taxes.—

(A) In general.—The adjusted taxes of any unit of local government are—

(i) the compulsory contributions exacted by such government for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems, and other than special assessments for capital outlay), as such contributions are determined by the Bureau of the Census for general statistical purposes,

(ii) adjusted (under regulations prescribed by the Secretary) by excluding an amount equal to that portion of such compulsory contributions which is properly allocable to expenses for education.

(B) Certain sales taxes collected by counties.—In any case where—

(i) a county government exacts sales taxes within the geographic area of a unit of local government and transfers part or all of such taxes to such unit without specifying the purposes for which such unit may spend the revenues, and

(ii) the Governor of the State notifies the Secretary that the requirements of this subparagraph have been met with respect to such taxes,

then the taxes so transferred shall be treated as the taxes of the unit of local government (and not the taxes of the county government).

(f) Relative Income Factor.—For purposes of this subtitle, the relative income factor is a fraction—

(1) in the case of a State, the numerator of which is the per capita income of the United States and the denominator of which is the per capita income of that State;

(2) in the case of a county area, the numerator of which is the per capita income of the State in which it is located and the denominator of which is the per capita income of that county area; and

(3) in the case of a unit of local government, the numerator of which is the per capita income of the county area in which it is located and the denominator of which is the per capita income of the geographic area of that unit of local government.

For purposes of this subsection, per capita income shall be determined on the basis of income as defined in paragraph (3) of subsection (a).

(g) Allocation Rules for Five Factor Formula.—For purposes of section 106(b)(3)—

(1) Allocation on basis of population.—Any allocation among the States on the basis of population shall be made by

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allocating to each State an amount which bears the same ratio to the total amount to be allocated as the population of such State bears to the population of all the States.

(2) ALLOCATION ON BASIS OF URBANIZED POPULATION.—Any allocation among the States on the basis of urbanized population shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the urbanized population of such State bears to the urbanized population of all the States.

(3) ALLOCATION ON BASIS OF POPULATION INVERSELY WEIGHTED FOR PER CAPITA INCOME.—Any allocation among the States on the basis of population inversely weighted for per capita income shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as—

(A) the population of such State, multiplied by a fraction the numerator of which is the per capita income of all the States and the denominator of which is the per capita income of such State, bears to

(B) the sum of the products determined under subparagraph (A) for all the States.

(4) ALLOCATION ON BASIS OF INCOME TAX COLLECTIONS.—Any allocation among the States on the basis of income tax collections shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the income tax amount of such State bears to the sum of the income tax amounts of all the States.

(5) ALLOCATION ON BASIS OF GENERAL TAX EFFORT.—Any allocation among the States on the basis of general tax effort shall be made by allocating to each State an amount which bears the same ratio to the total amount to be allocated as the general tax effort amount of such State bears to the sum of the general tax effort amounts of all the States.

Subtitle B—Administrative Provisions

SEC. 121. REPORTS ON USE OF FUNDS; PUBLICATION.

(a) REPORTS ON USE OF FUNDS.—Each State government and unit of local government which receives funds under subtitle A shall, after the close of each entitlement period, submit a report to the Secretary setting forth the amounts and purposes for which funds received during such period have been spent or obligated. Such reports shall be in such form and detail and shall be submitted at such time as the Secretary may prescribe.

(b) REPORTS ON PLANNED USE OF FUNDS.—Each State government and unit of local government which expects to receive funds under subtitle A for any entitlement period beginning on or after January 1, 1973, shall submit a report to the Secretary setting forth the amounts and purposes for which it plans to spend or obligate the funds which it expects to receive during such period. Such reports shall be in such form and detail as the Secretary may prescribe and shall be submitted at such time before the beginning of the entitlement period as the Secretary may prescribe.

(c) PUBLICATION AND PUBLICITY OF REPORTS.—Each State government and unit of local government shall have a copy of each report submitted by it under subsection (a) or (b) published in a newspaper which is published within the State and has general circulation within the geographic area of that government. Each State government and unit of local government shall advise the news media of the publication of its reports pursuant to this subsection.

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SEC. 122. NONDISCRIMINATION PROVISION.

(a) In General.—No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under subtitle A.

(b) Authority of Secretary.—Whenever the Secretary determines that a State government or unit of local government has failed to comply with subsection (a) or an applicable regulation, he shall notify the Governor of the State (or, in the case of a unit of local government, the Governor of the State in which such unit is located) of the noncompliance and shall request the Governor to secure compliance. If within a reasonable period of time the Governor fails or refuses to secure compliance, the Secretary is authorized (1) to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) to exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or (3) to take such other action as may be provided by law.

78 Stat. 252.

(c) Authority of Attorney General.—When a matter is referred to the Attorney General pursuant to subsection (b), or whenever he has reason to believe that a State government or unit of local government is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

SEC. 123. MISCELLANEOUS PROVISIONS.

(a) Assurances to the Secretary.—In order to qualify for any payment under subtitle A for any entitlement period beginning on or after January 1, 1973, a State government or unit of local government must establish (in accordance with regulations prescribed by the Secretary, and, with respect to a unit of local government, after an opportunity for review and comment by the Governor of the State in which such unit is located) to the satisfaction of the Secretary that—

(1) it will establish a trust fund in which it will deposit all payments it receives under subtitle A;

(2) it will use amounts in such trust fund (including any interest earned thereon while in such trust fund) during such reasonable period or periods as may be provided in such regulations;

(3) in the case of a unit of local government, it will use amounts in such trust fund (including any interest earned thereon while in such trust fund) only for priority expenditures (as defined in section 103(a)), and will pay over to the Secretary (for deposit in the general fund of the Treasury) an amount equal to 110 percent of any amount expended out of such trust fund in violation of this paragraph, unless such amount is promptly repaid to such trust fund (or the violation is otherwise corrected) after notice and opportunity for corrective action;

(4) it will provide for the expenditure of amounts received under subtitle A only in accordance with the laws and procedures applicable to the expenditure of its own revenues;

(5) it will—

(A) use fiscal, accounting, and audit procedures which conform to guidelines established therefor by the Secretary (after consultation with the Comptroller General of the United States),

(B) provide to the Secretary (and to the Comptroller General of the United States), on reasonable notice, access to, and

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the right to examine, such books, documents, papers, or records as the Secretary may reasonably require for purposes of reviewing compliance with this title (or, in the case of the Comptroller General, as the Comptroller General may reasonably require for purposes of reviewing compliance and operations under subsection (c)(2)), and

(C) make such annual and interim reports (other than reports required by section 121) to the Secretary as he may reasonably require; Reports.

(6) all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction project, 25 percent or more of the costs of which project are paid out of its trust fund established under paragraph (1), will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5), and that with respect to the labor standards specified in this paragraph the Secretary of Labor shall act in accordance with Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c);

49 Stat. 1011.

5 USC app.

63 Stat. 108.

(7) individuals employed by it whose wages are paid in whole or in part out of its trust fund established under paragraph (1) will be paid wages which are not lower than the prevailing rates of pay for persons employed in similar public occupations by the same employer; and

(8) in the case of a unit of local government as defined in the second sentence of section 108(d)(1) (relating to governments of Indian tribes and Alaskan native villages), it will expend funds received by it under subtitle A for the benefit of members of the tribe or village residing in the county area from the allocation of which funds are allocated to it under section 108(b)(4).

Paragraph (7) shall apply with respect to employees in any category only if 25 percent or more of the wages of all employees of the State government or unit of local government in such category are paid from the trust fund established by it under paragraph (1).

(b) WITHHOLDING OF PAYMENTS.—If the Secretary determines that a State government or unit of local government has failed to comply substantially with any provision of subsection (a) or any regulations prescribed thereunder, after giving reasonable notice and opportunity for a hearing to the Governor of the State or the chief executive officer of the unit of local government, he shall notify the State government or unit of local government that if it fails to take corrective action within 60 days from the date of receipt of such notification further payments to it will be withheld for the remainder of the entitlement period and for any subsequent entitlement period until such time as the Secretary is satisfied that appropriate corrective action has been taken and that there will no longer be any failure to comply. Until he is satisfied, the Secretary shall make no further payments of such amounts.

(c) ACCOUNTING, AUDITING, AND EVALUATION.—

(1) IN GENERAL.—The Secretary shall provide for such accounting and auditing procedures, evaluations, and reviews as may be necessary to insure that the expenditures of funds received under subtitle A by State governments and units of local government comply fully with the requirements of this title. The Secretary is authorized to accept an audit by a State of such expenditures of a

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State government or unit of local government if he determines that such audit and the audit procedures of that State are sufficiently reliable to enable him to carry out his duties under this title.

(2) Comptroller General shall review compliance.—The Comptroller General of the United States shall make such reviews of the work as done by the Secretary, the State governments, and the units of local government as may be necessary for the Congress to evaluate compliance and operations under this title.

Subtitle C—General Provisions

SEC. 141. DEFINITIONS AND SPECIAL RULES.

(a) Secretary.—For purposes of this title, the term "Secretary" means the Secretary of the Treasury or his delegate. The term "Secretary of the Treasury" means the Secretary of the Treasury personally, not including any delegate.

(b) Entitlement Period.—For purposes of this title, the term "entitlement period" means—

(1) The period beginning January 1, 1972, and ending June 30, 1972.

(2) The period beginning July 1, 1972, and ending December 31, 1972.

(3) The period beginning January 1, 1973, and ending June 30, 1973.

(4) The one-year periods beginning on July 1 of 1973, 1974, and 1975.

(5) The period beginning July 1, 1976, and ending December 31, 1976.

(c) District of Columbia.—

(1) Treatment as state and local government.—For purposes of this title, the District of Columbia shall be treated both—

(A) as a State (and any reference to the Governor of a State shall, in the case of the District of Columbia, be treated as a reference to the Commissioner of the District of Columbia), and

(B) as a county area which has no units of local government (other than itself) within its geographic area.

(2) Reduction in case of income tax on nonresident individuals.—If there is hereafter enacted a law imposing a tax on income earned in the District of Columbia by individuals who are not residents of the District of Columbia, then the entitlement of the District of Columbia under subtitle A for any entitlement period shall be reduced by an amount equal to the net collections from such tax during such entitlement period attributable to individuals who are not residents of the District of Columbia. The preceding sentence shall not apply if—

(A) the District of Columbia and Maryland enter into an agreement under which each State agrees to impose a tax on income earned in that State by individuals who are residents of the other State, and the District of Columbia and Virginia enter into an agreement under which each State agrees to impose a tax on income earned in that State by individuals who are residents of the other State, or

(B) the Congress enacts a law directly imposing a tax on income earned in the District of Columbia by individuals who are not residents of the District of Columbia.

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SEC. 142. REGULATIONS.

(a) GENERAL RULE.—The Secretary shall prescribe such regula as may be necessary or appropriate to carry out the provisions of title.

(b) ADMINISTRATIVE PROCEDURE ACT TO APPLY.—The rulemaking provisions of subchapter II of chapter 5 of title 5 of the United States Code shall apply to the regulations prescribed under this title for entitlement periods beginning on or after January 1, 1973.

80 Stat. 381.
5 USC 551.

SEC. 143. JUDICIAL REVIEW.

(a) PETITIONS FOR REVIEW.—Any State which receives a notice of reduction in entitlement under section 107(b), and any State or unit of local government which receives a notice of withholding of payments under section 104(b) or 123(b), may, within 60 days after receiving such notice, file with the United States court of appeals for the circuit in which such State or unit of local government is located a petition for review of the action of the Secretary. A copy of the petition shall forthwith be transmitted to the Secretary; a copy shall also forthwith be transmitted to the Attorney General.

(b) RECORD.—The Secretary shall file in the court the record of the proceeding on which he based his action, as provided in section 2112 of title 28, United States Code. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

72 Stat. 941;
80 Stat. 1323.

(c) JURISDICTION OF COURT.—The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence contained in the record, shall be conclusive. However, if any finding is not supported by substantial evidence contained in the record, the court may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous actions. He shall certify to the court the record of any further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence contained in the record.

(d) REVIEW BY SUPREME COURT.—The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

62 Stat. 928.

SEC. 144. AUTHORITY TO REQUIRE INFORMATION ON INCOME TAX RETURNS.

(a) GENERAL RULE.—

(1) INFORMATION WITH RESPECT TO PLACE OF RESIDENCE.—Subpart B of part II of subchapter A of chapter 61 of the Internal Revenue Code of 1954 (relating to income tax returns) is amended by adding at the end thereof the following new section:

68A Stat. 731.
26 USC 6001.

"SEC. 6017A. PLACE OF RESIDENCE.

"In the case of an individual, the information required on any return with respect to the taxes imposed by chapter 1 for any period shall include information as to the State, county, municipality, and any other unit of local government in which the taxpayer (and any other individual with respect to whom an exemption is claimed on such return) resided on one or more dates (determined in the manner provided by regulations prescribed by the Secretary or his delegate) during such period."

26 USC 1.

(2) CLERICAL AMENDMENT.—The table of sections for such subpart B is amended by adding at the end thereof the following:

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"Sec. 6017A. Place of residence."

(b) Civil Penalty.—

68A Stat. 821;
85 Stat. 551.
26 USC 6651.

(1) In general.—Subchapter B of chapter 68 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new section:

"SEC. 6687. FAILURE TO SUPPLY INFORMATION WITH RESPECT TO PLACE OF RESIDENCE.

"(a) Civil Penalty.—If any person fails to include on his return any information required under section 6017A with respect to his place of residence, he shall pay a penalty of $5 for each such failure, unless it is shown that such failure is due to reasonable cause.

26 USC 6211.
26 USC 4940.

"(b) Deficiency Procedures Not To Apply.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and chapter 42 taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a)."

(2) Clerical amendment.—The table of sections for such subchapter B is amended by adding at the end thereof the following:

"Sec. 6687. Failure to supply information with respect to place of residence."

APPENDIX B

federal register

TUESDAY, APRIL 10, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 68

PART II

THE NATIONAL ARCHIVES OF THE UNITED STATES
1934

DEPARTMENT OF THE TREASURY

Monetary Offices

■

FISCAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

ENTITLEMENT PAYMENTS

Rules and Regulations

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Title 31—Money and Finance: Treasury

CHAPTER I—MONETARY OFFICES, DEPARTMENT OF THE TREASURY

PART 51—FISCAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

By notice of proposed rulemaking appearing in the FEDERAL REGISTER for Thursday, February 22, 1973 (38 FR 4918), regulations were proposed in order to disburse entitlement payments to States and unit of local government under the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512) for the entitlement period beginning January 1, 1973, and for entitlement periods subsequent thereto. A public hearing with respect to such proposed regulations was held on March 26, 1973. After consideration of all such relevant matter as was presented by interested persons regarding the proposed regulations, certain changes were made, and the proposed regulations are adopted by this document, subject to the changes indicated below:

Section 51.2(i).—The second sentence of § 51.2(i) of the proposed regulations is changed to read as set forth below.

Section 51.3.—Section 51.3 of the proposed regulations is changed by deleting the final sentence.

Section 51.4.—A new § 51.4 is inserted to read as set forth below.

Section 51.5.—A new § 51.5 is inserted to read as set forth below.

Section 51.11.—The second sentence of paragraph (a) of § 51.11 of the proposed regulations is changed to read as set forth below.

The third sentence of paragraph (b) of § 51.11 is changed to read as set forth below.

Section 51.13.—The second sentence of paragraph (a) of § 51.13 of the proposed regulations is changed to read as set forth below.

Paragraph (b) of § 51.13 of the proposed regulations is changed to read as set forth below.

Paragraph (c) of § 51.13 of the proposed regulations is changed to read as set forth below.

Section 51.20.—Section 51.20(d) of the proposed regulations is changed by deleting the word "population" as it appears immediately prior to the phrase "adjusted taxes", as set forth below.

Section 51.24.—Paragraph (a) of § 51.24 of the proposed regulations is changed to read as set forth below.

Section 51.26.—Paragraph (d) of § 51.26 of the proposed regulations is changed by inserting a new clause after the phrase "beginning July 1, 1971" as set forth below.

Paragraph (f) of § 51.26 is changed by deleting the period at the end of the paragraph, inserting a comma and adding a new clause as set forth below.

Paragraph (h) of § 51.26 is deleted and a new paragraph (h) is inserted to read as set forth below.

Paragraph (j) of § 51.26 is changed by inserting the word "Secretary's" prior to the phrase "Trust Fund", as set forth below.

Section 51.28.—The first sentence of § 51.28 of the proposed regulations is changed by inserting a period after the word "practicable" and by deleting the phrase "after the beginning of an applicable entitlement period", as set forth below.

Section 51.30.—The first sentence of paragraph (a) of § 51.30 of the proposed regulations is changed to read as set forth below.

A new paragraph (b) of § 51.30 is inserted to read as set forth below.

Paragraph (b) of the proposed regulations is redesignated as paragraph (c).

Paragraph (c) of the proposed regulations is redesignated as paragraph (d) and is changed to read as set forth below.

Paragraph (d) of § 51.30 is redesignated as paragraph (e) and is changed to read as set forth below.

Paragraphs (e) and (f) of the proposed regulations are redesignated as paragraphs (f) and (g) respectively.

Section 51.31.—A new paragraph (b) is added to § 51.31 of the proposed regulations, to read as set forth below.

Paragraph (b) of § 51.31 is redesignated as paragraph (c).

Section 51.32.—The second sentence of paragraph (a) of § 51.32 of the proposed regulations is changed by deleting the period at the end of the sentence, inserting a comma, and adding a clause as set forth below.

Subsection (4) of paragraph (b) of § 51.32 of the proposed regulations is changed by deleting the word "citizens" and inserting the word "persons", as set forth below.

A new paragraph (b)(5) of § 51.32 of the proposed regulations is inserted to read as set forth below.

A new sentence is inserted after the first sentence of paragraph (d) of § 51.32 to read as set forth below.

The second sentence of paragraph (d) of § 51.32 of the proposed regulations is changed by deleting the word "an" before the word "investigation" and by inserting the words "a prompt" before the word "investigation", as set forth below.

The first sentence of paragraph (f)(1) of § 51.32 of the proposed regulations is changed by adding a phrase after the word "notify" as set forth below.

Paragraph (f)(3) of § 51.32 is changed to read as set forth below.

Paragraph (f)(3)(v) of § 51.32 of the proposed regulations is changed to read as set forth below.

Section 51.40.—The first sentence of paragraph (b) of § 51.40 of the proposed regulations is changed to read as set forth below.

The second sentence of paragraph (b) of § 51.40 of the proposed regulations is changed by deleting the first two words which reads "Permission for", as set forth below.

Paragraph (d) of § 51.40 is changed to read as set forth below.

Section 51.41.—Paragraph (a) of §51.41 of the proposed regulations is changed by deleting the word "will" in the second sentence and inserting the word "may", as set forth below.

Paragraph (b) of § 51.41 of the proposed regulations is changed by deleting the word "will" in the first sentence and inserting the word "may". The second sentence of paragraph (b) is changed by deleting the word "will" and inserting the word "may" and by deleting the phrase "at a minimum", as set forth below.

Paragraph (b)(4) is changed to read as set forth below.

Paragraph (c) of § 51.41 of the proposed regulations is changed by deleting the word "will" in the second sentence and inserting the word "may", as set forth below.

The second sentence of paragraph (c)(1) is changed by inserting the clause "they consider" prior to the word "practicable", as set forth below.

Paragraph (c)(3) of § 51.41 is changed to read as set forth below.

Paragraph (c)(4) of § 51.41 is changed by the addition of a new sentence immediately following the first sentence, which addition reads as set forth below.

Because the purpose of these regulations is to provide immediate guidance to the States and units of local government in order that the requirements of the act be complied with, it is hereby found impracticable to issue such regulations subject to the effective date limitation of 5 U.S.C. 553(d).

The foregoing regulations are issued under the authority of the State and Local Fiscal Assistance Act of 1972 (Title I, Public Law 92-512), and Treasury Department Order No. 224, dated January 26, 1973 (38 FR 3342). These regulations shall become effective on April 5, 1973, at 3:50 p.m., and are applicable to entitlement periods beginning on or after January 1, 1973.

[SEAL] GRAHAM W. WATT,
Director,
Office of Revenue Sharing.

Approved April 5, 1973.

SAMUEL R. PIERCE, Jr.,
General Counsel.

Subpart A—General Information

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51.0 Scope and application of regulations.
51.1 Establishment of Office of Revenue Sharing.
51.2 Definitions.
51.3 Procedure for effecting compliance.
51.4 Extension of time.
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Subpart B—Reports and Written Communications

51.10 Reports to the Secretary; assurances.
51.11 Report on planned use and actual use of funds.
51.12 Certifications.
51.13 Publication and publicity of reports; public inspection.
51.14 Reports to the Bureau of the Census.

Subpart C—Computation and Adjustment of Entitlement

51.20 Data.
51.21 Adjusted taxes.
51.22 Date for determination of allocation.
51.23 Boundary changes, governmental reorganization, etc.

satisfied that appropriate corrective action has been taken and that there will no longer be any failure to comply. Until he is satisfied, the Secretary shall make no further payments of such amounts.

§ 51.4 Extension of time.

When by these regulations (other than those specified in subpart F of this part) an act is required within a specified time, the Secretary may grant a request for an extension of time if in his judgment it is necessary and appropriate. Requests for extensions of time shall set forth the facts and circumstances supporting the need for more time and the amount of additional time requested.

§ 51.5 Transfer of funds to secondary recipients.

The prohibition and restrictions on the use of entitlement funds set forth in subpart D of this part apply to a recipient government's entitlement funds which are transferred by it to another governmental unit or private organization. A violation of subpart D of this part by a secondary recipient shall constitute a violation by the recipient government and the applicable penalty shall be imposed on the recipient government.

Subpart B—Reports and Written Communications

§ 51.10 Reports to the Secretary; Assurances.

(a) *Reports for review and evaluation.* The Secretary may require each recipient government receiving entitlement funds to submit such annual and interim reports (other than those required by § 51.11) as may be necessary to provide a basis for evaluation and review of compliance with and effectiveness of the provisions of the Act and regulations of this part.

(b) *Requisite assurances for receipt of entitlement funds.* Each Governor of a State or chief executive officer of a unit of local government, in order to qualify for entitlement funds, must file a statement of assurances when requested by the Secretary, on a form to be provided, that such government will abide by certain specific requirements of the Act and the prohibitions and restrictions of Subparts D and E of this part, with respect to the use of entitlement funds. The Secretary will afford each Governor the opportunity for review and comment to the Secretary on the adequacy of the assurances by units of local government in his State.

§ 51.11 Report on Planned Use and Actual Use of Funds.

(a) *Planned use report.* Each recipient government which expects to receive funds under the Act shall submit to the Secretary a report, on a form to be provided, of the specific amounts and purposes for which it plans to spend the funds which it expects to receive for an entitlement period. The planned use reports for the third and fourth entitlement periods (the 6-month period beginning January 1, 1973 and ending June 30, 1973, and the fiscal year beginning July 1, 1973 and ending June 30, 1974) shall be filed with the Secretary on a date he shall determine. Thereafter, each planned use report shall be filed prior to the beginning of an entitlement period as defined in § 51.2(f).

(b) *Actual use report; status of trust fund.* Each recipient government which receives funds pursuant to the Act shall submit to the Secretary an annual report, on a form to be provided, of the amounts and purposes for which such funds have been spent or otherwise transferred from the trust fund (as defined in § 51.40(a)) during the reporting period. Such report also shall state any interest earned on entitlement funds during the period and the balance of the trust fund as of the date of the report's submission Such reports shall show the status of the trust fund as of June 30 and shall be filed with the Secretary on or before September 1 of each calendar year. All such funds must be used, obligated, or appropriated within the time period specified in § 51.40(b).

§ 51.12 Certifications.

The Secretary shall require a certification by the Governor, or the chief executive officer of the unit of local government, that no entitlement funds have been used in violation of the prohibition contained in § 51.30 against the use of entitlement funds for the purpose of obtaining matching Federal funds. In the case of a unit of local government the Secretary shall require a certification by the chief executive officer that entitlement funds received by it have been used only for priority expenditures as prescribed by § 51.31. The certifications required by this section shall be in such form as the Secretary may prescribe.

§ 51.13 Publication and publicity of reports; public inspection.

(a) *Publication of required reports.* Each recipient government must publish in a newspaper a copy of each report required to be filed under § 51.11 (a) and (b) prior to the time such report is filed with the Secretary. Such publication shall be made in one or more newspapers which are published within the State and have general circulation within the geographic area of the recipient government involved. In the case of a recipient government located in a metropolitan area which adjoins and extends beyond the boundary of the State, the recipient government may satisfy the requirement of this section by publishing its reports in a metropolitan newspaper of general circulation even though such newspaper may be located in the adjoining State from the recipient government.

(b) *Publicity.*—Each recipient government, at the same time as required for publication of reports under paragraph (a) of this section, shall advise the news media, including minority and bilingual news media, within its geographic area of the publication of its reports made pursuant to paragraph (a) of this section, and shall provide copies of such reports to the news media on request.

(c) *Public inspection.*—Each recipient government shall make available for public inspection a copy of each of the reports required under § 51.11(a) and (b) and information as necessary to support the information and data submitted on each of these reports. Such detailed information shall be available for public inspection at a specified location during normal business hours. The Secretary may prescribe additional guidelines concerning the form and content of such information.

§ 51.14 Reports to the Bureau of the Census.

It shall be the obligation of each recipient government to comply promptly with requests by the Bureau of the Census (or by the Secretary) for data and information relevant to the determination of entitlement allocations. Failure of any recipient government to so comply may place in jeopardy the prompt receipt by it of entitlement funds.

Subpart C—Computation and Adjustment of Entitlement

§ 51.20 Data.

(a) *In general.* The data used in determination of allocations and adjustments thereto payable under this part will be the latest and most complete data supplied by the Bureau of the Census or such other sources of data as in the judgment of the Secretary will provide for equitable allocations.

(b) *Computation and payment of entitlements.* (1) Allocations will not be made to any unit of local government if the available data is so inadequate as to frustrate the purpose of the Act. Such units of local government will receive an entitlement and payment when current and sufficient data become available as necessary to permit an equitable allocation.

(2) Payment to units of local government for which the Secretary has not received an address confirmation will be delayed until proper information is available to the Secretary.

(3) Where the Secretary determines that the data provided by the Bureau of the Census or the Department of Commerce are not current enough, or are not comprehensive enough, or are otherwise inadequate to provide for equitable allocations he may use other data, including estimates. The Secretary's determination shall be final and such other additional data and estimates as are used, including the sources, shall be publicized by notice in the FEDERAL REGISTER.

(c) *Special rule for 6 month entitlement periods.* For entitlement periods which encompass only one-half of a year, the adjusted taxes and intergovernmental transfers of any unit of local government for that half-year will be estimated to be one-half of the annual amounts.

(d) *Units of local government located in more than one county area.* In cases where a unit of local government is located in more than one county, each part of such unit is treated for allocation purposes as a separate unit of government, and the adjusted taxes, and intergovern-

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Sec.
51.24 Waiver of entitlement; nondelivery of checks; insufficient data.
51.25 Reservation of funds and adjustment of entitlement.
51.26 State must maintain transfers to local governments.
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51.30 Matching funds.
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Subpart E—Fiscal Procedures and Auditing

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51.41 Auditing and evaluation; scope of audits.

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51.51 Liberal construction
51.52 Reasonable notice and opportunity for hearing.
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51.55 Contents of complaint.
51.56 Service of complaint and other papers.
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51.58 Supplemental charge.
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51.67 Proposed findings and conclusion.
51.68 Initial decision of the administrative law judge.
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51.71 Procedure on review of decision of administrative law judge.
51.72 Decision of the Secretary.
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51.74 Publicity of proceedings.
51.75 Judicial review.

AUTHORITY: The provisions of this Part 51 are issued under the State and Local Fiscal Assistance Act of 1972 (title I, Public Law 92-512); and 5 U.S.C. 301.

Subpart A—General Information

§ 51.0 Scope and application of regulations.

(a) *In general.* The rules and regulations in this part are prescribed for carrying into effect the State and Local Fiscal Assistance Act of 1972 (Title I, Public Law 92-512) applicable to entitlement periods beginning January 1, 1973. Subpart A sets forth general information and definitions of terms used in this part. Subpart B of this part prescribes reports required under this part and publicity concomitant thereto. Subpart C of this part contains rules regarding the computation, allocation and adjustment of entitlement. Subpart D of this part prescribes prohibitions and restrictions on the use of funds. Subpart E of this part prescribes fiscal procedures and auditing requirements. Subpart F of this part contains rules relating to procedure and practice requirements where a recipient government has failed to comply with any provision of this part.

(b) *Saving clause.* Any cause of action arising out of noncompliance with the interim regulations covering payments made for the first and second entitlement periods (January 1, 1972, through June 30, 1972, and July 1, 1972, through December 31, 1972) shall continue to be covered by such regulations and any proceeding commenced thereon shall be governed by the procedures set forth in Subpart F of this part.

§ 51.1 Establishment of Office of Revenue Sharing.

There is established in the Office of the Secretary of the Treasury the Office of Revenue Sharing. The office shall be headed by a Director who shall be appointed by the Secretary of the Treasury. The Director shall perform the functions, exercise the powers and carry out the duties vested in the Secretary of the Treasury by the State and Local Fiscal Assistance Act of 1972, Title I, Public Law 92-512.

§ 51.2 Definitions.

As used in this part (except where the context clearly indicates otherwise, or where the term is defined elsewhere in this part) the following definitions shall apply:

(a) "Act" means the State and Local Fiscal Assistance Act of 1972, Title I of Public Law 92-512, approved October 20, 1972.

(b) "Chief executive officer" of a unit of local government means the elected official, or the legally designated official, who has the primary responsibility for the conduct of that unit's governmental affairs. Examples of the "chief executive officer" of a unit of local government may be: The elected mayor of a municipality, the elected county executive of a county, or the chairman of a county commission or board in a county that has no elected county executive, or such other official as may be designated pursuant to law by the duly elected governing body of the unit of local government; or the chairman, governor, chief, or president (as the case may be) of an Indian tribe or Alaskan native village.

(c) "Department" means the Department of the Treasury.

(d) "Entitlement" means the amount of payment to which a State government or unit of local government is entitled as determined by the Secretary pursuant to an allocation formula contained in the Act and as established by regulation under this part.

(e) "Entitlement funds" means the amount of funds paid or payable to a State government or unit of local government for the entitlement period.

(f) "Entitlement period" means one of the following periods of time:

(1) The 6-month period beginning January 1, 1973, and ending June 30, 1973.

(2) The fiscal year beginning July 1, 1973, and ending June 30, 1974.

(3) The fiscal year beginning July 1, 1974, and ending June 30, 1975.

(4) The fiscal year beginning July 1, 1975, and ending June 30, 1976.

(5) The 6-month period beginning July 1, 1976, and ending December 31, 1976.

(g) "Governor" means the Governor of any of the 50 States or the Commissioner of the District of Columbia.

(h) "Independent public accountants" means independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States.

(i) "Indian tribes and Alaskan native villages" means those Indian tribes and Alaskan native villages which have a recognized governing body and which perform substantial governmental functions. Certification to the Secretary by the Secretary of the Interior (or by the Governor of a State in the case of a State affiliated tribe) that an Indian tribe or an Alaskan native village has a recognized governing body and performs substantial governmental functions, shall constitute prima facie evidence of that fact.

(j) "Recipient government" means a State government or unit of local government as defined in this section.

(k) "Secretary" means the Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

(l) "State government" means the government of any of the 50 States or the District of Columbia.

(m) "Unit of local government" means the government of a county, municipality, township, or other unit of government below the State which is a unit of general government and which shall be determined on the basis of the same principles as used by the Bureau of the Census for general statistical purposes. The term "unit of local government" shall also include the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions. The District of Columbia, in addition to being treated as a State, shall also be treated as a county area which has no units of local government (other than itself) within its geographic area.

§ 51.3 Procedure for effecting compliance.

If the Secretary determines that a recipient government has failed to comply substantially with any provision of this part, and after giving reasonable notice and opportunity for a hearing to the Governor of the State or the chief executive officer of the unit of local government pursuant to Subpart F of this part, the Secretary shall notify the recipient government that if it fails to take corrective action within 60 days from the date of receipt of such notification further payments to it will be withheld for any subsequent entitlement period until such time as the Secretary is

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mental transfers of such parts are estimated on the basis of the ratio which the population of such part bears to the population of the entirety of such unit.

§ 51.21 Adjusted taxes.

(a) *In general.* Tax revenues are compulsory contributions to a unit of local government exacted for public purposes, as such contributions are determined by the Bureau of the Census for general statistical purposes. The term "adjusted taxes" means the tax revenues adjusted by excluding an amount equal to that portion of such compulsory contributions which is properly allocable to school operations, debt service on school indebtedness, school capital outlays, and other educational purposes.

(b) *Procedure for exclusion of tax revenues for education.* The tax revenues exacted by a unit of local government shall be adjusted to exclude any such tax revenues used for financing education in a manner consistent with the following provisions:

(1) Where a unit of local government finances education from a specific fund and lists tax revenues to the fund or levies a separate tax for purposes of education, such amounts as determined will constitute the tax revenues for education.

(2) If tax revenues for purposes of education are not separately identifiable because education is financed by expenditure or transferring of moneys from a general fund (or similarly named fund) to a school fund or funds, then the ratio of tax revenues (as defined in paragraph (a) of this section) to the total revenues in such fund shall be calculated, and that ratio multiplied by the expenditure or transfer of moneys from such fund to the school fund shall be equated with the tax revenues properly allocable to expenses for education. The phrase "total revenues in such fund" means cash and securities on hand in the general fund (or similarly named fund) at the beginning of the fiscal year, plus all revenues to the fund (other than trust or agency revenues) less cash and securities on hand at the end of the fiscal year. Trust and agency funds are those held specifically for individuals or governments for which no discretion can be exercised as to the amounts to be paid to the recipient.

(3) If any instance where neither paragraph (b) (1) nor (2) of this section permits determination of school taxes, then any procedure deemed equitable by the Secretary shall be utilized to ascertain adjusted taxes.

(c) *Validity of adjusted tax data.* Allocation of funds under the Act will be based on data reported by States and units of local governments to the Bureau of the Census and shall be in accordance with definitions established by the Bureau. No unit of government shall report to the Department of the Treasury or the Bureau of the Census in a manner which attempts to circumvent or frustrate the intent of this section.

§ 51.22 Date for determination of allocation.

(a) *In general.* Pursuant to the provisions of § 51.20 (a) and (b)(3), the determination of the data definitions upon which the allocations and entitlements for an entitlement period is to be calculated shall be made as of the day immediately preceding the beginning of the entitlement period. The final date upon which determinations of allocations and entitlements, including adjustments thereto, may be made for an entitlement period shall be determined by the Secretary as soon as practicable after the close of that entitlement period and shall be publicized by notice in the FEDERAL REGISTER.

(b) *Time limitation and minimum adjustment.* If prior to the date determined by the Secretary pursuant to paragraph (a) of this section, it is established to the satisfaction of the Secretary by factual evidence and documentation that the data used in the computation of an allocation is erroneous and, if corrected, would result in an increase or decrease of an entitlement of $200 or more of entitlement funds, an adjustment will be made.

(c) *Adjusted taxes and intergovernmental transfers.* The dates for determining the amount of adjusted taxes and intergovernmental transfers of a unit of local government will be the fiscal year of such unit ending during the 12 months prior to July 1, 1971. If a more recent period is used, it shall be such fiscal year that can be uniformly assembled for all units of government prior to the beginning of the affected entitlement period.

§ 51.23 Boundary changes, governmental reorganization, etc.

(a) *In general.* Boundary changes, governmental reorganizations, or changes in State statutes or constitutions occurring prior to or during an entitlement period which were not taken into account during the initial allocation shall, if not within the scope of paragraph (d) of this section, affect such allocation or payments in a manner consistent with the following provisions:

(1) A boundary change, governmental reorganization, or change in State statutes or constitution relevant to the computation of an entitlement of a unit of local government under the Act, occurring prior to the beginning of an entitlement period shall result in an alteration to the entitlement of that unit if brought to the attention of the Bureau of the Census within 60 days (or by June 30, 1973, in case of the third entitlement period) after the beginning of such entitlement period.

(2) A boundary change, governmental reorganization, or change in State statutes or constitution relevant to the computation of entitlement of a unit of local government under the Act, occurring during an entitlement period shall not result in a change to the entitlement of that unit until the next entitlement period. However, payment tendered to such unit for the entitlement period may be redistributed pursuant to the provisions of paragraphs (b) and (c) of this section.

(b) *New units of local government.* A unit of local government which came into existence during an entitlement period shall first be eligible for an entitlement allocation for the next entitlement period. However, if such unit is a successor government, it shall be eligible to receive the entitlement payment of the unit or units of local government to which it succeeded in accordance with the conditions of the succession.

(c) *Dissolution of units of local government.* A unit of local government which dissolved, was absorbed or ceased to exist as such during an entitlement period is eligible to receive an entitlement payment for that entitlement period: *Provided,* That such unit of local government is in the process of winding up its governmental affairs or a successor unit of local government has legal capacity to accept and use such entitlement funds. Entitlement payments which are returned to the Secretary because of the cessation of existence of a unit of local government shall be placed in the State and Local Government Fiscal Assistance Trust Fund until such times as they can be redistributed according to the conditions under which the unit of local government ceased to exist.

(d) *Limitations on adjustment for annexations.* (1) Annexations by units of local government having a population of less than 5,000 on April 1, 1970, shall not affect the entitlement of any unit of local government for an entitlement period unless the Secretary determines that adjustments pursuant to such annexations would be equitable and would not be unnecessarily burdensome, expensive, or otherwise impracticable.

(2) Annexations of areas with a population of less than 250, or less than 5 percent of the population of the gaining government, shall not affect the entitlement of any unit of local government.

(e) *Certification.* Units of local government affected by a boundary change, governmental reorganization, or change in State statutes or constitution shall, before receiving an entitlement adjustment or payment redistribution pursuant to this section, obtain State certification that such change was accomplished in accordance with State law. The certifying official shall be designated by the Governor, and such certification shall be submitted to the Bureau of the Census.

§ 51.24 Waiver of entitlement; nondelivery of check; insufficient data.

(a) *Waiver.*—Any unit of local government may waive its entitlement for any entitlement period: *Provided,* The chief executive officer with the consent of the governing body of such unit notifies the Secretary that the entitlement payments for that entitlement period are being

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waived within 60 days after the beginning of the affected entitlement period. The entitlement waived shall be added to and shall become a part of, the applicable entitlement of the next highest unit of government eligible to receive entitlement funds in that State in which the unit of government waiving entitlement is located. A waiver of entitlement by such unit of local government shall be deemed an irrevocable waiver for that entitlement period.

(b) *Nondelivery.* Entitlement funds for any entitlement period which are returned by the U.S. Postal Service to the Department of the Treasury as being nondeliverable because of incorrect address information, or which are unclaimed for any reason, shall be placed in the State and Local Government Fiscal Assistance Trust Fund until such time as payment can be made.

(c) *Insufficient data.* Entitlement funds for any entitlement period which are withheld from payment because of insufficient data upon which to compute the entitlement, or for which payment cannot be made for any other reason, shall remain in the State and Local Government Fiscal Assistance Trust Fund until such time as payment can be made.

§ 51.25 Reservation of funds and adjustment of entitlement.

(a) *Reservation of entitlement funds.* In order to make subsequent adjustments to an entitlement payment under this part which may be necessitated because of insufficient or erroneous data, or for any other reason, the Secretary shall reserve in the State and Local Government Fiscal Assistance Trust Fund such percentage of the total entitlement funds for any entitlement period as in his judgment shall be necessary to insure that there will be sufficient funds available so that all recipient governments will receive their full entitlements. Those reserve funds will be distributed during subsequent entitlement periods to recipient governments as promptly as possible after the close of the time for adjustments pursuant to § 51.22.

(b) *Adjustment to future entitlement payments.* Adjustment to an entitlement of a recipent government will ordinarily be effected through alteration to entitlement payments for future entitlement periods unless there is a downward adjustment which is so substantial as to make future payment alterations impracticable or impossible. In such case the Secretary may demand that the funds in excess of the initial entitlement included in an entitlement payment be repaid to the Secretary, and such funds shall be promptly repaid on demand.

§ 51.26 State must maintain transfers to local governments.

(a) *General rule.* The entitlement of any State government for any entitlement period beginning on or after July 1, 1973, shall be reduced by the amount (if any) by which—

(1) The average of the aggregate amounts transferred by the State government out of its own sources during such period (or during that State's fiscal year ending on or immediately prior to the end of such period) and the preceding entitlement period (or such fiscal year) to all units of local government (as defined in § 51.2(m)) in such State, is less than,

(2) The similar aggregate amount for the 1-year period beginning July 1, 1971 (or that State's fiscal year ending on or immediately prior to the end of such period).

For purposes of paragraph (a)(1) of this section, the amount of any reduction in the entitlement of a State government under this section for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State government out of its own sources during such period to units of local government in such State. The phrase "own sources" means all sources of State revenue (including the State's revenue sharing entitlement funds) but excluding intergovernmental revenues received from the Federal Government.

(b) *Measurement of maintenance of effort.* In those States that do not have an accounting system providing an audit trail for all funds concerned (from own source to final application) in intergovernmental transfer to units of local government (such as those States in which intergovernmental transfers to units of local government are made from a commingled fund with no identification as to specific revenue source), the following formula may be applied by the Secretary to establish the base year intergovernmental transfers to units of local government from own sources and to generally monitor level of accordance with the maintenance provision of paragraph (a) of this section during future entitlement periods:

(1) It shall be assumed that the ratio of a State's own source intergovernmental transfers to units of local government to that State's total intergovernmental transfers to units of local government is equal to the ratio of that State's own source revenues to its total revenues. Thus, for a State in which such formula may be applied, its base year own source intergovernmental transfers to units of local government shall be assumed to equal its total intergovernmental transfers to units of local government in the base year multiplied by its own source revenue in the base year divided by its total revenues in the base year.

(2) In a State in which the formula is applied, the State's own source intergovernmental transfers to units of local government in a future entitlement period shall be assumed to equal the average of—

(i) The State's total intergovernmental transfers to units of local government during that period (or that State's fiscal year ending on or immediately prior to the end of such period) multiplied by its own source revenue in that period (or such fiscal year) divided by its total revenues in that period (or such fiscal year) and

(ii) The State's total intergovernmental transfers to units of local government during the preceding entitlement period (or that State's fiscal year ending on or immediately prior to the end of such period) multiplied by its own source revenue in that period (or such fiscal year) divided by its total revenues in that period (or such fiscal year).

(3) Therefore, in a State in which the formula is applied, maintenance (for a given entitlement period) of intergovernmental transfer effort to units of local government will be measured by the difference between that State's average aggregate intergovernmental transfers to units of local government (over the appropriate periods) as calculated by employing the method described in paragraph (b)(2) of this section and that State's own source intergovernmental transfers to units of local government in the base period as calculated by employing the method described in paragraph (b)(1) of this section.

(4) Should the application of this formula during any entitlement period indicate nonmaintenance, for example, should a State's calculated own source average aggregate intergovernmental transfers to units of local government (over the appropriate periods) be less than such transfers as calculated for the base period, the difference (as defined in paragraph (b)(3) of this section) shall constitute the future indicated reduction in that State's entitlement unless such State can document to the Secretary that the fact or amount of nonmaintenance as determined by application of the formula is inaccurate.

(c) *Alternative procedure.* If the Secretary shall determine that application of the formula set forth in paragraph (b) of this section in a particular case provides an inaccurate or unfair measure of transfer effort, then any formula, procedure, or method deemed equitable by the Secretary, may be utilized to measure such transfer effort for the purpose of implementing the maintenance provision.

(d) *Adjustment where State assumes responsibility for category of expenditures.* If the State government establishes to the satisfaction of the Secretary that since June 30, 1972, it has assumed responsibility for a category of expenditures which (before July 1, 1972) was the responsibility of local governments located in such State, then, the aggregate amount taken into account under paragraph (a)(2) of this section shall be reduced to the extent that increased State government spending (out of its own sources) for such category has replaced corresponding amounts which for the 1-year period beginning July 1, 1971 (or that State's fiscal year ending on or immediately prior to the end of such period) it transferred to units of local government.

(e) *Adjustment where new taxing powers are conferred upon local governments.* If a State establishes to the satisfaction of the Secretary that since June 30, 1972, one or more units of local government within such State have had conferred upon them new taxing authority, then, the aggregate amount taken into account under paragraph (a)(2) of this section shall be reduced to the extent of the larger of—

(1) An amount equal to the amount of the taxes collected by reason of the exercise of such new taxing authority by such local governments, or

(2) An amount equal to the amount of the loss of revenue to the State by reason of such new taxing authority being conferred on such local governments.

No amount shall be taken into consideration under paragraph (e)(1) of this section if such new taxing authority is an increase in the authorized rate of tax under a previously authorized kind of tax, unless the State is determined by the Secretary to have decreased a related State tax.

(f) *Special rule for period beginning July 1, 1973.* In the case of the entitlement period beginning July 1, 1973, the preceding entitlement period for purposes of paragraph (a)(1) of this section shall be treated as being the 1-year period beginning July 1, 1972, or that State's fiscal year which ends prior to June 30, 1973.

(g) *Special rule for period beginning July 1, 1976.* In the case of the entitlement period beginning July 1, 1976, and ending December 31, 1976, the aggregate amount taken into account under paragraph (a)(1) of this section for the preceding entitlement period and the aggregate amount taken into account under paragraph (a)(2) of this section shall be one-half of the amounts which (but for this paragraph (g)) would be taken into account.

(h) *Report by Governor.* Pursuant to the authority of § 51.10 and in order to effect compliance with this section, the Governor of each State shall submit to the Secretary within 90 days after the end of the State's fiscal year, on a form to be provided, the aggregate transfers from own source revenues to units of local government for those entitlement periods or that State's fiscal years specified on the report:

(1) The State's own source revenues.

(2) The State's total revenues.

(3) The State's own source transfers to units of local government.

(4) The State's total transfers to units of local government.

(i) *Reduction in entitlement.* If the Secretary has reason to believe that paragraph (a) of this section requires a reduction in the entitlement of any State government for any entitlement period, he shall give reasonable notice and opportunity for hearing to the State. If, thereafter, he determines that paragraph (a) of this section requires the reduction of such entitlement, he shall also determine the amount of such reduction and shall notify the Governor of such State of such determinations and shall withhold from subsequent payments to such State government under this subtitle an amount equal to such reduction.

(j) *Transfer to general fund.* An amount equal to the reduction in the entitlement of any State government which results from the application of this section (after any judicial review) shall be transferred from the Secretary's Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

§ 51.27 Optional formula.

(a) *In general.* A State government may by law provide for the allocation of entitlement funds among county areas, or among units of local government (other than county governments, Indian tribes, and Alaskan native villages): (1) On the basis of the population multiplied by the general tax effort factors of such areas or units of local governments; or, (2) on the basis of the population multiplied by the relative income factors of such areas or units of local government; or, (3) on the basis of a combination of those two factors. Any State which provides by law for such a variation in the allocation formula provided by subsections 108(a) or 108(b) (2) and (3) of the Act, shall notify the Secretary of such law not later than 30 days before the beginning of the first entitlement period to which such law is to apply. Any such law shall:

(1) Provide for allocating 100 percent of the aggregate amount to be allocated under subsections 108(a) or 108(b) (2) and (3) of the Act;

(2) Apply uniformly throughout the State; and

(3) Apply during the period beginning on the first day of the first entitlement period to which it applies and ending on December 31, 1976.

(b) *Single legislation required.* If a State government alters its county area allocation formula or its local government allocation formula, or both, such alteration may be made only once and must be made in the same legislative enactment.

(c) *Certification required.* Paragraph (a) of this section shall apply within a State only if the Secretary certifies that the State law complies with the requirements of such paragraph. The Secretary shall not certify any such law with respect to which he receives notification later than 30 days prior to the first entitlement period during which it is to apply.

§ 51.28 Adjustment of data factors.

The data factors and data definitions used in computing entitlements under the Act for any entitlement period will be made available to each State government and unit of local government as soon as practicable. Each such government will be given a reasonable opportunity to question those data factors by providing the Department with factual documentation demonstrating evidence of error. If the Secretary determines that any data factors used were erroneous, necessary adjustments will be made. Data factors which are used for more than one entitlement period will be subject to challenge and adjustment only for the first entitlement period in which they were used.

§ 51.29 Adjustment for maximum and minimum per capita entitlement; 100 percent criterion.

(a) *County area maximum and minimum per capita entitlement*—(1) *In general.* Pursuant to section 108(b)(6) of the Act, the per capita amount allocated to any county area shall be not less than 20 percent, nor more than 145-percent, of two-thirds of the amount allocated to the State under section 106 of the Act, divided by the population of that State.

(2) *One hundred forty-five-percent rule.* If a county area allocation is greater than the 145-percent limit, its allocation shall be reduced to the 145-percent level and the resulting surplus shall be shared proportionately by all remaining unconstrained county areas.

(3) *Twenty-percent rule.* If, after the application of paragraph (a)(2) of this section, a county area allocation is less than the 20-percent limit, its allocation shall be increased to the 20-percent level and the resulting deficit shall be shared proportionately by all remaining unconstrained county areas.

(b) *Local government (other than a county government)*—(1) *In general.* Except as provided below, the per-capita amount allocated to any unit of local government (other than a county government) shall be not less than 20-percent, nor more than 145-percent, of two-thirds of the amount allocated to the State under section 106 of the Act, divided by the population of that State.

(2) *One hundred forty-five-percent rule.* If a unit of local government is allocated an amount greater than the 145-percent limit, its allocation shall be reduced to that level.

(3) *Twenty-percent rule.* If a unit of local government is allocated an amount less than the 20-percent limit, its allocation shall be increased to the lower of the 20-percent limit or 50 percent of the sum of that unit's adjusted taxes and transfers.

(c) *One hundred-percent criterion.* If the amounts allocated to recipient governments of a State do not total 100 percent of the amount allocated to that State, the amount to be allocated to county areas shall be adjusted appropriately, and the allocation process shall be repeated until the amounts allocated to recipient governments of a State total 100 percent of the amount allocated to that State.

Subpart D—Prohibition and Restrictions on Use of Funds

§ 51.30 Matching funds.

(a) *In general.*—Entitlement funds may not be used, directly or indirectly, as a contribution in order to obtain any Federal funds under any Federal program. The indirect use of entitlement funds to match Federal funds is defined to mean the allocation of entitlement funds to a nonmatching expenditure and thereby releasing or displacing local funds which are used for the purpose of matching Federal funds. This prohibition on use of entitlement funds as matching

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funds applies to Federal programs where Federal funds are required to be matched by non-Federal funds and to Federal programs which allow matching from either Federal or non-Federal funds.

(b) *Secondary recipients.*—The prohibition of paragraph (a) applies to a recipient government's entitlement funds which are transferred by it to another governmental unit or private organization. A violation of this section by a secondary recipient shall constitute a violation by the recipient government and the penalty provided by subparagraph (f) of this section shall be imposed on the recipient government.

(c) *Certification required.*—Pursuant to § 51.12, the chief executive officer of each recipient government must certify to the Secretary that entitlement funds received by it have not been used in violation of this section.

(d) *Increased State or local government revenues.*—No recipient government shall be determined to have used funds in violation of paragraph (a) of this section with respect to any funds received for any entitlement period (or during its fiscal year) to the extent that net revenues received by it from its own sources during such period exceed the net revenues received by it from its own sources during the 1-year period beginning July 1, 1971 (or its fiscal year ending during the same period). In the case of the entitlement periods of 6 months, one-half of such net revenues shall be measured.

(e) *Presumptions of compliance.*—No recipient government shall be determined to have used entitlement funds in violation of the indirect prohibition of paragraph (a) of this section to the extent that:

(1) The expenditure of entitlement funds was accompanied by an aggregate increase in nonmatching funds expenditures.

(2) The receipt of entitlement funds permitted that government to reduce taxes: *Provided,* Nonentitlement revenue is sufficient to cover all matching funds contributions.

(3) The matching funds contribution in question is accounted for by an inkind contribution which was not financed directly or indirectly with entitlement funds.

(f) *Determination by Secretary of the Treasury.* If the Secretary has reason to believe that a recipient government has used entitlement funds to match Federal funds in violation of the Act, the Secretary shall give such government notice and opportunity for hearing. If the Secretary determines that such government has, in fact, used funds in violation of this section, he shall notify such government of his determination and shall request repayment to the United States of an amount equal to the funds so used. To the extent that such government fails to repay such amount, the Secretary shall withhold from subsequent entitlement payments to that government an amount of entitlement funds equal to the funds used in violation of this section or, if this method is impracticable, the Secretary may refer the matter to the Attorney General for appropriate civil action.

(g) *Use of entitlement funds to supplement Federal grant funds.* The prohibition on use of entitlement funds contained in paragraph (a) of this section does not prevent the use of entitlement funds to supplement other Federal grant funds. For example, if expenditures for a project exceed the amount available from non-Federal funds plus matched Federal funds, the recipient government may use entitlement funds to defray the excess costs: *Provided, however,* That the entitlement funds are not used to match other Federal funds: *And Provided further,* That in the case of a unit of local government, the use of entitlement funds to supplement Federal grants is restricted to the category of expenditures as set forth in § 51.31.

§ 51.31 Permissible expenditures.

(a) *In general.* Entitlement funds received by units of local government may be used only for priority expenditures. As used in this part, the term "priority expenditures" means:

(1) Ordinary and necessary maintenance and operating expenses for—

(i) Public safety (including law enforcement, fire protection, and building code enforcement);

(ii) Environmental protection (including sewage disposal, sanitation, and pollution abatement);

(iii) Public transportation (including transit systems and streets and roads);

(iv) Health;

(v) Recreation;

(vi) Libraries;

(vii) Social services for the poor or aged; and

(viii) Financial administration, and

(2) Ordinary and necessary capital expenditures authorized by law. No unit of local government may use entitlement funds for nonpriority expenditures which are defined as any expenditures other than those included in paragraph (a)(1) and (2) of this section. Pursuant to § 51.12, the chief executive officer of each unit of local government must certify to the Secretary that entitlement funds received by it have been used only for priority expenditures as required by the Act.

(b) *Use of entitlement funds for debt retirement.*—The use of entitlement funds for the repayment of debt is a permissible expenditure provided that:

(1) Entitlement funds are not used to pay any interest incurred because of the debt,

(2) The debt was originally incurred for a priority expenditure purpose as defined in this section,

(3) The actual expenditure from the proceeds of the indebtedness (i.e., for materials, contractors, etc.) was made on or after January 1, 1972 (the beginning of the first entitlement period),

(4) The actual expenditures from the proceeds of the indebtedness were not in violation of any restrictions enumerated in this subpart.

(c) *Effect of noncompliance.*—In the case of a unit of local government which uses an amount of entitlement funds for other than priority expenditures as defined in paragraph (a) of this section, it will pay over to the Secretary (for deposit in the general fund of the Treasury) an amount equal to 110 percent of any amount expended in violation of paragraph (a) of this section, unless such amount of entitlement funds is promptly repaid to the trust fund of the local government after notice by the Secretary and opportunity for corrective action.

§ 51.32 Discrimination.

(a) *Discrimination prohibited.* No person in the United States shall, on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with entitlement funds made available pursuant to subtitle A of title I of the Act. For purposes of this section "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient government, or by any unit of government or private contractor receiving entitlement funds from the recipient government. "Funded in whole or in part with entitlement funds" means that entitlement funds in any amount have been transferred from the recipient government's trust fund to an identifiable administrative unit and disbursed in a program or activity.

(b) *Specific discriminatory actions prohibited.* (1) A recipient government may not, under any program or activity to which the regulations of this section may apply, directly or through contractual or other arrangements, on the grounds of race, color, national origin, or sex:

(i) Deny any service or other benefit provided under the program or activity.

(ii) Provide any service or other benefit which is different, or is provided in a different form from that provided to others under the program or activity.

(iii) Subject to segregated or separate treatment in any facility in, or in any matter or process related to receipt of any service or benefit under the program or activity.

(iv) Restrict in any way the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under the program or activity.

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or other benefit provided under the program or activity.

(vi) Deny an opportunity to participate in a program or activity as an employee.

(2) A recipient government may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.

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(3) A recipient government in determining the site or location of facilities may not make selections of such site or location which have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the grounds of race, color, national origin, or sex from, the benefits of an activity or program; or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act and of this section.

(4) A recipient government shall not be prohibited by this section from taking any action to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to overcome prior discriminatory practice or usage.

(5) Notwithstanding anything to the contrary in this section, nothing contained herein shall be construed to prohibit any recipient government from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

(c) *Assurances required.* Pursuant to § 51.10(b), each Governor of a State or chief executive officer of a unit of local government shall include, in the assurances to the Secretary required by that section, a statement that all programs and activities funded in whole or in part by entitlement funds will be conducted in compliance with the requirements of this section. Such assurances shall be in a form prescribed by the Secretary.

(d) *Complaints and investigations.* Any person who believes himself, or any specific class of persons who believe themselves, to be subjected to discrimination prohibited by this section, may by himself or by a representative file with the Secretary a written report setting forth the nature of the discrimination alleged and the facts upon which the allegation is based. The Secretary shall advise the chief executive officer of the recipient government of the receipt of such report. If the Secretary has reason to believe that the report shows a recipient government has failed to comply with the provisions of this part, he will cause a prompt investigation to be made with respect to the facts and circumstances alleged in the report and with respect to the program or activity concerned. Such investigation may be made, if necessary, with the assistance of complainants or of the recipent government. No representative of a recipient government nor any of its agencies shall intimidate, threaten, coerce, or discriminate against any person or class of persons because of testimony, assistance, or participation in an investigation, proceeding, or hearing under this section.

(e) *Compliance reviews.* The Secretary shall monitor and determine compliance of recipient governments with the requirements of this section and of the Act. Compliance reviews will be undertaken from time to time, as appropriate, at the discretion of the Secretary.

(f) *Procedure for effecting compliance.* (1) Whenever the Secretary determines that a recipient government has failed to comply with this section, he shall notify the chief executive officer of such recipient government and the Governor of the State in which such government is located of the noncompliance and shall request the Governor to secure compliance. If within a reasonable time, not to exceed 60 days, the Governor fails, or refuses to secure compliance, the Secretary is authorized: (i) To refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; (ii) to exercise the powers and functions and the administrative remedies provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or (iii) to take such other action as may be authorized by law.

(2) No action to effect compliance with this section by any other means authorized by law shall be taken by the Department until:

(i) The Secretary has determined that compliance cannot be secured by voluntary means, and the recipient government has been notified of such determination; and

(ii) The expiration of at least 10 days from the mailing of such notice to the recipient government. During this period of at least 10 days, additional efforts may be made to persuade the recipient government to comply with this regulation and to take such corrective action as may be appropriate.

(3) An order pursuant to Title VI of the Civil Rights Act of 1964 terminating or refusing to grant or continue entitlement payments or demanding the forfeiture, repayment or withholding of entitlement funds shall become effective only after the procedures in paragraph (f)(1) of this section have been complied with and:

(i) The Secretary has advised the recipient government of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(ii) There has been an express finding on the record, after such notice prescribed in this section, and after opportunity for hearing, of a failure by the recipient government to comply with a requirement imposed by or under this part;

(iii) The action has been approved by the Secretary; and

(iv) Thirty days have elapsed after the Secretary has filed with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a full written report of the circumstances and the grounds for such action; and

(v) The forfeiture or repayment of entitlement funds shall be limited to the particular recipient government as to whom a finding of noncompliance is made with this section and shall be limited to the program or activity in which such noncompliance has been so found. The amount of entitlement funds as are forfeited by the recipient government shall be reflected in a downward adjustment to future entitlement payments and shall be deposited in the general fund of the Treasury. If the Secretary determines that adjustment to future entitlement payments is impracticable, he may refer the matter to the Attorney General for appropriate civil action to require repayment of such amount to the United States. Furthermore, the Secretary shall withhold payment of all entitlement funds to a recipient government for which there has been a finding of noncompliance until such time that he is satisfied that such government will comply with the provisions of this section.

(g) *Delegation.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of this section (other than the review of initial decision of the administrative law judge) including the achievement of effective coordination within the executive branch in the implementation of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

(h) *Hearing procedure.* Whenever a procedure which requires due notice and opportunity for hearing is involved by the Secretary to effect compliance under this section, the procedural regulations promulgated in Subpart F of this part shall govern.

§ 51.33 Wage rates and labor standards.

(a) *Construction laborers and mechanics.* A recipient government which receives entitlement funds under the Act shall require that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction project, 25 percent or more of the costs of which project are paid out of its entitlement funds: (1) Will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act as amended (40 U.S.C. 276a—276a-7); and, (2) will be covered by labor standards specified by the Secretary of Labor pursuant to 29 CFR Parts 1, 3, 5, and 7.

(b) *Request for wage determination.* In situations where the Davis-Bacon standards are applicable the recipient government must file with the regional office of the U.S. Department of Labor, a Standard Form 308 requesting a wage determination for each intended project at least 30 days before the invitation for bids, and must ascertain that the wage determination issued and the contract clauses required by 29 CFR 5.5 and 29 CFR 5a.3 are incorporated in the contract specifications. The recipient government must also satisfy itself that the successful bidder is made aware of his labor standards responsibilities under the Davis-Bacon Act.

(c) *Government employees.* A recipient

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government which employs individuals whose wages are paid in whole or in part from entitlement funds must pay wages which are not lower than the prevailing rates of pay for persons employed in similar public occupations by the same employer. However, this subsection shall apply with respect to employees in any category only if 25 percent or more of the wages of all employees of the recipient government in such category are paid from the trust fund established by it under § 51.40(a).

§ 51.34 Restriction on expenditures by Indian tribes and Alaskan native villages.

Indian tribes and Alaskan native villages as defined in § 51.2 are required to expend entitlement funds only for the benefit of members of the tribe or village residing in the county area from which the allocation of entitlement funds was originally made. Expenditures which are so restricted will not constitute a failure to comply with the requirement of § 51.32(a).

Subpart E—Fiscal Procedures and Auditing

§ 51.40 Procedures applicable to the use of funds.

A recipient government which receives entitlement funds under the Act shall:

(a) Establish a trust fund and deposit all entitlement funds received and all interest earned thereon in that trust fund. The trust fund may be established on the books and records as a separate set of accounts, or a separate bank account may be established.

(b) Use, obligate, or appropriate such funds (including any interest earned thereon while in such trust fund) within 24 months from the end of the entitlement period to which the check is applicable unless approval is obtained from the Secretary for a longer period within which the funds may be utilized. An extension of time in which to utilize the funds must be obtained by application to the Secretary. Such application will set forth the facts and circumstances supporting the need for more time and the amount of additional time requested. The Secretary may grant such extensions of time as in his judgment appear necessary or appropriate.

(c) Provide for the expenditure of entitlement funds in accordance with the laws and procedures applicable to the expenditure of its own revenues.

(d) Maintain its fiscal accounts in a manner sufficient to:

(1) Permit the reports required by the Secretary to be prepared therefrom,

(2) Document compliance with the matching funds certification, and

(3) Permit the tracing of entitlement funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of this part.

The accounting for entitlement funds shall at a minimum employ the same fiscal accounting and internal audit procedures as are used with respect to expenditures from revenues derived from the recipient government's own sources.

(e) Provide to the Secretary and to the Comptroller General of the United States, on reasonable notice, access to and the right to examine such books, documents, papers or records as the Secretary may reasonably require for the purpose of reviewing compliance with the Act and the regulations of this part or, in the case of the Comptroller General, as the Comptroller General may reasonably require for the purpose of reviewing compliance and operations under the Act.

§ 51.41 Auditing and evaluation; scope of audits.

(a) *In general.* The Secretary shall provide for such auditing and evaluation as may be necessary to insure that expenditures of entitlement funds by recipient governments comply with the requirements of the Act and regulations of this part. Detail audits, reviews and evaluations may be made on a sample basis through inspection of records, and of reports required under subpart B of this part, and through on-site examinations, to determine whether the recipient governments have properly discharged their financial responsibilities and to evaluate compliance with the Act and the regulations of this part.

(b) *Scope of audits.* The scope of such audits may include a review of entitlement fund transactions, accounts and reports. In addition, the scope of such audits may include an examination of the following areas:

(1) Compliance with assurances made under § 51.10.

(2) Compliance with the requirement that States must maintain transfers to local governments as required by section 107(b) of the Act.

(3) Compliance with the reporting requirements and accuracy of the reports submitted to the Secretary as set forth in Subpart B of this part.

(4) Accuracy of fiscal data reported to the Bureau of the Census.

(5) Accuracy of the public records required under § 51.13(c).

(c) *Reliance on State and local government audits.* It is the intention of the Secretary to rely to the maximum extent possible on audits of recipient governments by State and local government auditors and independent public accountants. The Secretary may accept such audits when in his judgment this may reasonably be done consistent with the provisions of the Act and regulations of this part, and provided:

(1) Audits are performed in accordance with generally accepted auditing standards. Recipient governments are encouraged to have such audits performed, to the extent they consider practicable, in accordance with standards for the *Audit of Governmental Organizations, Programs, Activities and Functions* issued by the Comptroller General in June 1972.

(2) Audits include coverage as set forth in paragraph (b) of this section.

(3) Audit workpapers and related audit reports are retained for 3 years after the issuance of the audit report, and are available upon request to the Secretary and the Comptroller General or to their representatives; and,

(4) Audit reports shall contain a clear statement of the auditor's findings as to compliance or noncompliance with the requirements of the Act and the regulations of this part. In the event that an auditor is unable to review compliance with all of the provisions of paragraph (b), the audit report shall reflect those areas in which a compliance review was not performed. Audit reports which disclose or otherwise indicate a possible failure to comply substantially with any requirements of the Act or the regulations of this part will be submitted to the Secretary by the Governor or chief executive officer.

Subpart F—Proceedings for Reduction in Entitlement, Withholding, or Repayment of Funds

§ 51.50 Scope of subpart.

The regulations of this subpart govern the procedure and practice requirements involving adjudications where the Act requires reasonable notice and opportunity for hearing.

§ 51.51 Liberal construction.

The regulations in this subpart shall be liberally construed to secure just, expeditious, and efficient determination of the issues presented. The Rules of Civil Procedure for the District Courts of the United States, where applicable, shall be a guide in any situation not provided for or controlled by this subpart, but shall be liberally construed or relaxed when necessary.

§ 51.52 Reasonable notice and opportunity for hearing.

Whenever the Secretary has reason to believe that a recipient government has failed to comply with any section of the Act or of the provisions of this part, and that repayment, withholding, or reduction in the amount of an entitlement of a recipient government is required, he shall give reasonable notice and opportunity of hearing to such government prior to the invocation of any sanction under the Act.

§ 51.53 Opportunity for compliance.

Except in proceedings involving willfulness or those in which the public interest requires otherwise, a proceeding under this part will not be instituted until such facts or conduct which may warrant such action have been called to the attention of the chief executive officer of the recipient government in writing and he has been accorded an opportunity to demonstrate or achieve compliance with the requirements of the Act and the regulations of this part. If the recipient government fails to meet the requirements of the Act and regulations within such reasonable time as may be specified by the Secretary, a proceeding shall be initiated. If the recipient government is a unit of local government, a copy of all written communications regarding the alleged violation shall be transmitted by the Secretary to the Governor of the State in which the unit of local government is located.

§ 51.54 Institution of proceeding.

A proceeding to require repayment of funds to the Secretary, or to withhold funds from subsequent entitlement payments, or to reduce the entitlement of a recipient government, shall be instituted by the Secretary by a complaint which names the recipient government as the respondent.

§ 51.55 Contents of complaint.

(a) *Charges.* A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against it so that it is able to prepare a defense to the charges.

(b) *Demand for answer.* Notification shall be given in the complaint as to the place and time within which the respondent shall file its answer, which time shall be not less than 30 days from the date of service of the complaint. The complaint shall also contain notice that a decision by default will be rendered against the respondent in the event it fails to file its answer as required.

§ 51.56 Service of complaint and other papers.

(a) *Complaint.* The complaint or a true copy thereof may be served upon the respondent by first-class mail or by certified mail, return receipt requested; or it may be served in any other manner which has been agreed to by the respondent. Where the service is by certified mail, the return Postal Service receipt duly signed on behalf of the respondent shall be proof of service.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon the respondent or upon its attorney of record by first-class mail. Such mailing shall constitute complete service.

(c) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a proceeding under this part, and the place of filing is not specified in this subpart or by rule or order of the administrative law judge, the paper shall be filed with the Director, Office of Revenue Sharing, Treasury Department, Washington, D.C. 20226. All papers shall be filed in duplicate.

(d) *Motions and requests.* Motions and requests may be filed with the designated administrative law judge, except that an application to extend the time for filing an answer shall be filed with the Director, Office of Revenue Sharing, pursuant to § 51.57(a).

§ 51.57 Answer; referral to administrative law judge.

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint, unless on application the time is extended by the Secretary. The respondent's answer shall be filed in duplicate with the Director, Office of Revenue Sharing.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which it knows to be true; nor shall a respondent state that it is without sufficient information to form a belief when in fact it possesses such information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegation in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced at a hearing.

(d) *Failure to file answer.* Failure to file an answer within the time prescribed in the complaint, except as the time for answer is extended under paragraph (a) of this section, shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the administrative law judge shall make his findings and decision by default without a hearing or further procedure.

(e) *Reply to answer.* No reply to the respondent's answer shall be required, and new matter in the answer shall be deemed to be denied, but the Secretary may file a reply in his discretion and shall file one if the administrative law judge so requests.

(f) *Referral to administrative law judge.* Upon receipt of the answer by the Director, or upon filing a reply if one is deemed necessary, or upon failure of the respondent to file an answer within the time prescribed in the complaint or as extended under paragraph (a) of this section, the complaint (and answer, if one is filed) shall be referred to the administrative law judge who shall then proceed to set a time and place for hearing and shall serve notice thereof upon the parties at least 15 days in advance of the hearing date.

§ 51.58 Supplemental charges.

If it appears that the respondent in its answer falsely and in bad faith, denies a material allegation of fact in the complaint or states that it has no knowledge sufficient to form a belief, when in fact it does possess such information, or if it appears that the respondent has knowingly introduced false testimony during the proceedings, the Secretary may thereupon file supplemental charges against the respondent. Such supplemental charges may be tried with other charges in the case, provided the respondent is given due notice thereof and is afforded an opportunity to prepare its defense thereto.

§ 51.59 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the administrative law judge may order or authorize amendment of the pleading to conform to the evidence: *Provided,* The party that would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegation of the pleading as amended. The administrative law judge shall make findings on any issue presented by the pleadings as so amended.

§ 51.60 Representation.

A respondent or proposed respondent may appear in person through its chief executive officer or it may be represented by counsel or other duly authorized representative. The Secretary shall be represented by the General Counsel of the Treasury.

§ 51.61 Administrative law judge; powers.

(a) *Appointment.* An administrative law judge, appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105), shall conduct proceedings upon complaints filed under this subpart.

(b) *Powers of administrative law judge.* Among other powers provided by law, the administrative law judge shall have authority, in connection with any proceeding under this subpart, to do the following things:

(1) Administer oaths and affirmations;

(2) Make ruling upon motions and requests. Prior to the close of the hearing no appeal shall lie from any such ruling except, at the discretion of the administrative law judge, in extraordinary circumstances;

(3) Determine the time and place of hearing and regulate its course and conduct. In determining the place of hearing the administrative law judge may take into consideration the requests and convenience of the respondent or its counsel;

(4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written arguments on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make initial findings and decision.

§ 51.62 Hearings.

(a) *In general.* The administrative law judge shall preside at the hearing on a complaint. Testimony of witnesses shall be given under oath or affirmation. The hearing shall be stenographically recorded and transcribed. Hearings will be conducted pursuant to section 7 of

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the Administrative Procedure Act (5 U.S.C. 556).

(b) *Failure to appear.* If a respondent fails to appear at the hearing, after due notice thereof has been served upon it or upon its counsel of record, it shall be deemed to have waived the right to a hearing and the administrative law judge may make his findings and decision against the respondent by default.

(c) *Waiver of hearing.* A respondent may waive the hearing by informing the administrative law judge, in writing, on or before the date set for hearing, that it desires to waive hearing. In such event the administrative law judge may make his findings and decision based upon the pleadings before him. The decision shall plainly show that the respondent waived hearing.

§ 51.63 Stipulations.

The administrative law judge shall prior to or at the beginning of the hearing require that the parties attempt to arrive at such stipulations as will eliminate the necessity of taking evidence with respect to allegations of facts concerning which there is no substantial dispute. The administrative law judge shall take similar action, where it appears appropriate, throughout the hearing and shall call and conduct any conferences which he deems advisable with a view to the simplification, clarification, and disposition of any of the issues involved.

§ 51.64 Evidence.

(a) *In general.* Any evidence which would be admissible under the rules of evidence governing proceedings in matters not involving trial by jury in the Courts of the United States, shall be admissible and controlling as far as possible: *Provided that,* the administrative law judge may relax such rules in any hearing when in his judgment such relaxation would not impair the rights of either party and would more speedily conclude the hearing, or would better serve the ends of justice. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded by the administrative law judge.

(b) *Depositions.* The deposition of any witness may be taken pursuant to § 51.65 and the deposition may be admitted.

(c) *Proof of documents.* Official documents, records, and papers of a respondent shall be admissible as evidence without the production of the original provided that such documents, records and papers are evidenced as the original by a copy attested or identified by the chief executive officer of the respondent or the custodian of the document, and contain the seal of the respondent.

(d) *Exhibits.* If any document, record, paper, or other tangible or material thing is introduced in evidence as an exhibit, the administrative law judge may authorize the withdrawal of the exhibit subject to any conditions he deems proper. An original document, paper or record need not be introduced, and a copy duly certified (pursuant to paragraph (b) of this section) shall be deemed sufficient.

(e) *Objections.* Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as permitted by the administrative law judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the right of either party to the proceeding.

§ 51.65 Depositions.

(a) *In general.* Depositions for use at a hearing may, with the written approval of the administrative law judge, be taken by either the Secretary or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 15 days written notice to the other party, before any officer duly authorized to administer an oath for general purposes. Such written notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 15 days written notice may be waived by the parties in writing, and depositions may then be taken from the persons and at times and places mutually agreed to by the parties.

(b) *Written interrogatories.* When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogatories shall be mailed by first class mail or delivered to the opposing party at least 10 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the administrative law judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

§ 51.66 Stenographic record; oath of reporter; transcript.

(a) *In general.* A stenographic record shall be made of the testimony and proceedings, including stipulations and admissions of fact in all proceedings, but not arguments of counsel unless otherwise ordered by the administrative law judge. A transcript of the proceedings (and evidence) at the hearing shall be made in all cases.

(b) *Oath of reporter.* The reporter making the stenographic record shall subscribe an oath before the administrative law judge, to be filed in the record of the case, that he (or she) will truly and correctly report the oral testimony and proceedings at such hearing and accurately transcribe the same to the best of his (or her) ability.

(c) *Transcript.* In cases where the hearing is stenographically reported by a Government contract reporter copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Department of the Treasury, a copy thereof will be supplied to the respondent or its counsel at actual cost of duplication. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (31 U.S.C. 483(a)).

§ 51.67 Proposed findings and conclusions.

Except in cases where a respondent has failed to answer the complaint or has failed to appear at the hearing, or has waived the hearing, the administrative law judge, prior to making his initial decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

§ 51.68 Initial decision of the administrative law judge.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, but in no event later than 30 days after the submission of proposed findings and conclusions if they are submitted, the administrative law judge shall make his initial decision in the case. The initial decision shall include a statement of the findings of fact and the conclusions therefor, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record, and shall provide for one of the following orders:

(a) An order that the respondent pay over to the Secretary an amount equal to 110 percent of any amount determined to be improperly expended by the respondent in violation of § 51.31 relating to priority expenditures; or

(b) An order that the respondent pay over to the Secretary an amount equal to the amount of entitlement funds determined to be expended in violation of the Act and the provisions of this part; or

(c) An order that the Secretary withhold from subsequent entitlement payments to the respondent an amount equal to the amount of entitlement funds determined to be expended in violation of the Act and the provisions of this part; or

(d) An order that the entitlement of a recipient government be reduced and the amount of such reduction to be withheld from subsequent entitlement payments; or

(e) An order dismissing the proceedings.

§ 51.69 Certification and transmittal of record and decision.

After reaching his initial decision, the administrative law judge shall certify to the complete record before him and shall immediately forward the certified record, together with a certified copy of his initial decision, to the Secretary. The administrative law judge shall serve also a copy of the initial decision by certified mail to the chief executive officer of the respondent or to its attorney of record.

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§ 51.70 What constitutes record.

The transcript of testimony, pleadings and exhibits, all papers and requests filed in the proceeding, together with all findings, decisions and orders, shall constitute the exclusive record in the matter.

§ 51.71 Procedure on review of decision of administrative law judge.

(a) *Appeal to the Secretary.* Within 30 days from the date of the initial decision and order of the administrative law judge, the respondent may appeal to the Secretary and file his exceptions to the initial decision and his reasons therefor. The respondent shall transmit a copy of his appeal and reasons therefor to the Director of the Office of Revenue Sharing, who may, within 30 days from receipt of the respondent's appeal, file a reply brief in opposition to the appeal. A copy of the reply brief, if one is filed, shall be transmitted to the respondent or its counsel of record. Upon the filing of an appeal and a reply brief, if any, the Secretary shall make the final agency decision on the record of the administrative law judge submitted to him.

(b) *Appeal by the Director of the Office of Revenue Sharing.* In the absence of an appeal by the respondent, the Director of the Office of Revenue Sharing may, on his own motion, within 45 days after the initial decision, serve on the respondent by certified mail a notice that he will appeal the decision to the Secretary, for review. Within 30 days from such notice, the Director of the Office of Revenue Sharing or his counsel will file with the Secretary his exceptions to the initial decision and his supporting reasons therefor. A copy of the exceptions shall be transmitted to the respondent or its counsel of record, who, within 30 days after receipt thereof, may file a reply brief thereto with the Secretary and submit a copy to the Director of the Office of Revenue Sharing or his counsel. Upon the filing of a reply brief, if any, the Secretary will make the final agency decision on the record of the administrative law judge.

(c) *Absence of appeal.* In the absence of either exceptions by the respondent or a notice of appeal by the Director of the Office of Revenue Sharing within the time set forth in paragraphs (a) and (b) of this section, or a review initiated by the Secretary on his own motion within the time allowed to the Director of the Office of Revenue Sharing, the initial decision of the administrative law judge shall constitute the final decision of the Department.

§ 51.72 Decision of the Secretary.

On appeal from or review of the initial decision of the administrative law judge, the Secretary will make the final agency decision. In making his decision the Secretary will review the record or such portions thereof as may be cited by the parties to permit limiting of the issues. The Secretary may affirm, modify, or revoke the findings and initial decision of the administrative law judge. A copy of the Secretary's decision shall be transmitted immediately to the chief executive officer of the respondent or its counsel of record.

§ 51.73 Effect of order of repayment or withholding of funds.

In case the final order against the respondent is for repayment of funds to the United States, such amount as determined by the order shall be repaid upon request by the Secretary. To the extent that the respondent fails to do so upon request of the Secretary, the Secretary shall withhold from subsequent entitlement payments to the respondent an amount equal to the amount not repaid. In case the final order against the respondent is for the withholding of an amount of subsequent entitlement payments, such amounts as ordered shall be withheld by the Director of the Office of Revenue Sharing after notice to the chief executive officer of the recipient government that if it fails to take corrective action within 60 days after receipt of the notice, further entitlement payments will be withheld until the Secretary is satisfied that appropriate corrective action has been taken and there is full compliance with the Act and regulations of this part. In every case in which the respondent is a unit of local government, a copy of the final order and notice shall be submitted to the Governor of the State in which the respondent is located.

§ 51.74 Publicity of proceedings.

(a) *In general.* A proceeding conducted under this subpart shall be open to the public and to elements of the news media provided that, in the judgment of the administrative law judge, the presence of the media does not detract from the decorum and dignity of the proceeding.

(b) *Availability of record.* The record established in any proceeding conducted under this subpart shall be made available to inspection by the public as provided for and in accordance with regulations of the Department of the Treasury pursuant to 31 CFR Part 1.

(c) *Decisions of the administrative law judge.* The statement of findings and the initial decision of the administrative law judge in any proceedings, whether or not on appeal or review, shall be indexed and maintained by the Director of the Office of Revenue Sharing and made available for inspection by the public at the public documents room of the Department. If practicable, the statement of findings and the decisions of the administrative law judge shall be published periodically by the Department and offered for sale through the Superintendent of Documents.

§ 51.75 Judicial review.

Actions taken under administrative proceedings pursuant to this subpart shall be subject to judicial review pursuant to section 143 of Subtitle C of the Act. If a respondent desires to appeal a decision of the administrative law judge which has become final, or a final order of the Secretary for review of appeal, to the U.S. Court of Appeals, as provided by law, the Secretary, upon prior notification of the filing of the petition for review, shall have prepared in triplicate, a complete transcript of the record of the proceeding, and shall certify to the correctness of the record. The original certificate together with the original record shall then be filed with the Court of Appeals which has jurisdiction.

[FR Doc.73-6878 Filed 4-5-73;3:50 pm]

APPENDIX C

Organizations Involved in Revenue Sharing Activities

Government Agencies

Advisory Commission on Intergovernmental Relations (ACIR)

Mr. Will Myers, Senior Analyst
726 Jackson Place, N.W.
Washington, D.C. 20575

(202) 382-4976

ACIR is looking at general revenue sharing from the perspective of its influence on intergovernmental relations. Its monitoring activities include occasional hearings, with testimony primarily from State and local elected officials; periodic surveys of political jurisdictions; and analyses of specific aspects of general revenue sharing legislation and Treasury Department regulations.

General Accounting Office (GAO)

Mr. Albert Hair, Assistant Director, General Government Division
441 G Street, N.W.
Washington, D.C. 20548

(202) 386-3473

The Revenue Sharing Act gives the General Accounting Office (GAO) the responsibility of helping Congress evaluate the operations of the revenue sharing program. The GAO has issued two reports on revenue sharing uses, one on State government and the other on local governments. In addition to these comprehensive general surveys, the GAO will issue special reports on specific aspects of revenue sharing.

National Science Foundation (NSF)

Office of Programs and Resources
Research Applied to National Needs
Washington, D.C. 20550

(202) 632-4290

NSF intends to provide $1,200,000 for applied research on selected topics related to general revenue sharing. Topics include the impact of general revenue sharing on intergovernmental relations and government operations and finance, the extent to which funds are allocated to meet the needs of the disadvantaged, the degree to which citizens are informed about and involved in spending decisions, the effectiveness of nondiscrimination provisions, and the cost and consequences of the various spending limitations on revenue sharing funds. The purpose of the research is to provide information for forthcoming deliberations on the renewal and future form of general revenue sharing. Proposals will be accepted up to January 31, 1975.

Office of Revenue Sharing (ORS), Department of the Treasury

Mr. Graham Watt, Director
2401 E Street, N.W.
Washington, D.C. 20226

(202) 634-5157

The Office of Revenue Sharing (ORS) is the Federal agency with primary responsibility for administering, auditing, and reviewing the general revenue sharing program. It has authority to ensure that recipient governments comply with the provisions of both the legislation and the Treasury Department regulations. It is also responsible for determining the allocations to recipient governments according to the statutory distribution formula. ORS stores and makes available for public inspection copies of all the planned and actual use reports submitted to the Treasury Department by the more than 38,000 jurisdictions receiving revenue sharing funds. ORS also tabulates data from planned and actual use reports and issues publications summarizing its findings. Any official complaints about revenue sharing, either from public agencies or private organizations and individuals, should be directed to ORS.

Private Organizations

Brookings Institution

Mr. Richard Nathan, Senior Fellow
1775 Massachusetts Avenue, N.W.
Washington, D.C. 20036

(202) 797-6066

Brookings is conducting a 5-year study of general revenue sharing with the support of the Ford Foundation. Data for reports scheduled to be published annually come from information collected by 23 field observers in 65 selected States, counties, and cities, as well as from material from the Treasury Department, Census Bureau, other agencies, and the media. The project focuses heavily on intergovernmental relationships, the fiscal policies and priority setting mechanisms of State and local governments, and the distribution of revenue sharing funds among various types of jurisdictions.

Center for Community Change

Mr. Woodrow Ginsburg, Director of Research
100 Wisconsin Avenue, N.W.
Washington, D.C. 20007

(202) 338-6977

The Center for Community Change is one of four organizations involved in a general revenue sharing monitoring and research project that is designed to encourage citizen involvement in assessing the impact of revenue sharing primarily on the poor, near poor, and minority constituencies. The other organizations include the Center for National Policy Review, the National Urban Coalition, and the League of Women Voters. Of these groups, the Center for Community Change carries the principal responsibility for training local community leaders in methods for monitoring revenue sharing expenditures.

Center for National Policy Review

Mr. Morton H. Sklar, Attorney
The Law School
Catholic University
Washington, D.C. 20017

(202) 832-8525

In addition to its participation in the monitoring and research project sponsored by the consortium of four organizations mentioned above, the Center for National Policy Review is closely following the Federal Government's response to civil rights problems and compliance issues. It is also studying the extent to which the general revenue sharing allocation formula distributes funds commensurate with the needs of jurisdictions with large concentrations of poor or minority people. Reasons for any inequities will be identified and various possible alternative formulas will be assessed.

Joint Center for Political Studies

Mr. Eddie Williams, President
1426 H Street, N.W.
Washington, D.C. 20005

(202) 638-4477

Cosponsored by Howard University and the Metropolitan Applied Research Center, the Joint Center is monitoring the use of revenue sharing funds from the perspective of minority groups and black elected officials. Its publication, The Minority Community and Revenue Sharing and its monthly newsletter, Focus, provide useful information on general and special revenue sharing.

Lawyers' Committee for Civil Rights under Law

Mr. Harold Himmelman, Attorney
733 15th Street, N.W.
Washington, D.C. 20005

(202) 628-6700

The Committee is primarily concerned with preparing administrative and court actions to enforce nondiscrimination requirements of general revenue sharing. It worked with the Office of Revenue Sharing in developing civil rights guidelines for the administration of the revenue sharing program. It is providing advice to community and public service local groups about their rights under the Revenue Sharing Act.

Leadership Conference on Civil Rights

Mr. Marvin Caplan, Director of Washington Office
2027 Massachusetts Avenue, N.W.
Washington, D.C. 20036

(202) 667-1780

Composed of some 130 national organizations concerned with civil rights and racial problems, the Leadership Conference operates a task force on Federal programs that is focusing heavily on general revenue sharing and its implications for civil rights. The Conference, with staff help from the Center for National Policy Review, analyzed Treasury regulations on general revenue sharing and appeared at hearings before the Office of Revenue Sharing on these regulations. The Conference continues to monitor Federal policies and practices relating to revenue sharing and civil rights.

League of Women Voters of the U.S.

Ms. Alice Kinkead, Staff Coordinator
1730 M Street, N.W.
Washington, D.C. 20037

(202) 296-1770

The League, through its State and local affiliates, is one of four organizations participating in a cooperative effort to study the impact of general revenue sharing on the poor and minorities and to encourage citizen involvement in priority-setting.

Massachusetts Institute of Technology

Mr. Lawrence Susskind
Assistant Professor
Department of Urban Studies and Planning 7-338
Cambridge, Massachusetts 02139

(617) 864-6900 ext. 2022

As part of a larger national effort, a set of monitoring instruments was designed for use by coalitions of State and local citizens' groups in an effort to answer questions concerning revenue sharing.

Movement for Economic Justice

Ms. Nadeleine Adamson
1609 Connecticut Avenue, N.W.
Washington, D.C. 20009

(202) 462-4200

The organization provides technical assistance, through pamphlets, workshops and onsite visits, to community groups and individuals interested in competing effectively for general revenue sharing funds. It has published a community guide to general revenue sharing.

National Association for the Advancement of Colored People (NAACP)

Mr. William Morris, Director of Housing Programs
1790 Broadway
New York, New York 10019

(212) 245-2100

The NAACP has issued a handbook on general revenue sharing for its affiliates and citizen groups interested in monitoring allocations and expenditures of revenue sharing funds. The organization's efforts are focused primarily on civil rights compliance problems, citizen participation, and technical assistance to black and other minority groups. With the help of the parent organization, local NAACP groups are prepared to file suits and complaints where civil rights requirements have been violated.

National Association of Counties

Mr. Larry Naake, Legislative Representative
1735 New York Avenue, N.W.
Washington, D.C. 20006

(202) 785-9577

The Association is the major source of information and technical assistance provided to elected and appointed county officials throughout the country. This service is provided through conferences, briefing sessions, newsletters and special publications. The Association has also conducted an informal survey of the use of revenue sharing funds by county governments. In addition, the Association is active in representing county government interest in revenue sharing before Congress and appropriate Federal agencies.

National Clearinghouse on Revenue Sharing

Mr. Donald W. Lief, Director
1785 Massachusetts Avenue, N.W.
Washington, D.C. 20036

(202) 265-4000

The Clearinghouse serves as a focal point for the media, officials, research groups, and public interest organizations seeking current information. The primary interest of the Clearinghouse is determining how States and localities are responding to the needs of less advantaged citizens. It is sponsored by the following private organizations: The League of Women Voters Education Fund, the National Urban Coalition, the Center for Community Change, and the Center for National Policy Review.

National Council of La Raza

Mr. Robert Olivas, Director of National Services
1025 15th Street, N.W.
Washington, D.C. 20005

(202) 659-1251

The Council is providing information and technical assistance on revenue sharing to Chicano groups throughout the country. It has sponsored conferences and training programs to further this objective. Two of the Council's publications, Washington Scene Report and News Alert, carry reports and stories on revenue sharing that are of interest to the Council's constituency.

National Governors Conference

Mr. James Martin, Director of State Federal Affairs
1150 17th Street, N.W.
Washington, D.C. 20036

(202) 785-5600

The Conference is monitoring the States' use of general revenue sharing funds, primarily through State budget directors. The Conference has issued several publications on revenue sharing. In addition, the Conference is active in representing the interest of State governments in revenue sharing before Congress and appropriate Federal agencies.

National League of Cities/U.S. Conference of Mayors

Mr. Tim Honey, Counsel for Office of Federal Relations
1620 Eye Street, N.W.
Washington, D.C. 20006

(202) 293-7380

This organization is a major source of information and technical assistance for mayors and city officials throughout the country. This broad range of support is carried out through numerous conferences and briefings, personal visitations, special publications, and a continual flow of newsletters and articles. The Conference and League conducted an informal survey of the use of general revenue sharing in approximately 200 localities. The League and the Conference are also active in representing the cities' interest in revenue sharing before Congress and appropriate Federal agencies.

National Organization for Women

Ms. Ann Scott, Vice President for Legislation
National Press Building
529 14th Street, N.W.
Washington, D.C. 20004

(202) 347-2279

The organization and its more than 500 affiliates are monitoring general revenue sharing at the local level and becoming increasingly involved in the process of determining local allocations. NOW stresses equal employment opportunities for women, increased expenditures for social services, and the need to open local budget processes through public hearings and citizen involvement.

National Urban Coalition

Mr. Gene Rodriguez, Deputy Director
2100 M Street, N.W.
Washington, D.C. 20037

(202) 293-7625

The NUC is one of four organizations participating in a cooperative effort to study the impact of general revenue sharing on the poor and minorities and to encourage citizen involvement in priority-setting.

National Urban League

Mr. Ronald H. Brown, Director
425 13th Street, N.W.
Washington, D.C. 20004

(202) 393-4332

The national organization, as well as its more than 90 local affiliates, are looking at revenue sharing from the perspective of black and poverty populations. The League is particularly concerned with the effect of the undercount of the black population on revenue sharing allocations to cities with black concentrations.

Pennsylvania State University

Dr. Robert D. Lee
Associate Professor
Institute of Public Administration
University Park, Pennsylvania 16802

(814) 865-2536

This institute is conducting a study to determine the types of changes in local government decisionmaking and operations that have occurred due to changes in Federal funding patterns. Specifically, the research addresses the question of how the introduction of general revenue sharing has affected local governments in Pennsylvania. Revenue sharing is considered in terms of its influences upon local taxation, indebtedness, spending patterns, and the decisionmaking process.

Princeton University

Mr. John Heintz
c/o Woodrow Wilson School
Princeton, New Jersey 08540

(609) 921-7137 (evenings only)

The purpose of the research is to evaluate the distribution of revenue sharing funds among cities according to the general characteristics used in the revenue sharing formula and according to some additional selected demographic variables.

Purdue University and George Washington University

Dr. David A. Caputo
Assistant Professor of Political Science
Purdue University
West Lafayette, Indiana 47906

(317) 494-5818

Dr. Richard L. Cole
Assistant Professor of Political Science
George Washington University
Washington, D.C. 20006

(202) 676-6290

Research conducted by these co-directors focuses on the relationship between revenue sharing patterns and demographic-socioeconomic characteristics of cities and examines revenue sharing decisions and their impact on American political structures. The co-directors have submitted a manuscript, "Political Decentralization and Urban Politics: The Case of Revenue Sharing," for publication.

Revenue Sharing Advisory Service

Mr. Richard Thompson, President
1820 Jefferson Place, N.W.
Washington, D.C. 20036

(202) 872-1766

The Service, a profitmaking enterprise, provides information on revenue sharing through its monthly Revenue Sharing Bulletin, as well as technical assistance to governments and other organizations. Though primarily directed at State and local government officials, its comprehensive Revenue Sharing Handbook is a useful guide to general revenue sharing legislation, regulations, and procedures.

Southern Regional Council

Mr. Joe Tom Easley, Director, Governmental Monitoring Project
52 Fairlee, N.W.
Atlanta, Georgia 30303

(404) 522-8764

With Carnegie, Babcock, and Rockefeller Foundation grants, the Council plans to monitor and evaluate the performance of State and local governments in the 11 States that make up the old Confederacy in responding to "new federalism" initiatives, including revenue sharing, reorganization, impoundment, and program termination. The project also provides technical assistance to local groups in selected counties and municipalities throughout the region who wish to monitor and evaluate the consequences of the "new federalism" in their own communities.

United Methodist Church, Women's Division

Ms. Joyce Hamlin, Secretary for Legislative Affairs
100 Maryland Avenue, N.E.
Washington, D.C. 20002

(202) 543-6433

The United Methodist Church has sponsored a series of regional and local conferences on revenue sharing and budget priorities, including a seven-State meeting in Nashville, Tennessee, and a conference in Chicago for the metropolitan area. The major focus of these conferences has been the role of the citizen and community groups in local decisionmaking.

United Way of America

Mr. Hamp Coley, Vice President of National Agencies
300 N. Lee Street
Alexandria, Virginia 22314

(703) 836-7100

In addition to keeping its affiliates informed about the allocation and use of general revenue sharing, the United Way is surveying a sample of 400 local United Way organizations to determine the extent to which human or social service programs are being assisted by revenue sharing funds.

APPENDIX D

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NOTE: The Office of Revenue Sharing periodically issues publications giving detailed information on data elements and payments for each unit of government. It also publishes a newsletter entitled *Revenews*.

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